107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 107–43

PROPOSING A TAX LIMITATION AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

APRIL 20, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.J. Res. 41]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 41) proposing a tax limitation amendment to the Constitution of the United States, having considered the same, reports favorably thereon with an amendment and recommends that the joint resolution do pass.

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89–006

The amendment is as follows:

Amend the title so as to read:

Joint resolution proposing a tax limitation amendment to the Constitution of the United States.

PURPOSE AND SUMMARY

H.J. Res. 41, introduced by Congressman Pete Sessions of Texas, would require any legislative measure changing the internal revenue laws that increases revenue by more than a de minimis amount to receive the concurrence of two-thirds of the Members of each House voting and present.[1] Excluded from this requirement would be any increase resulting from the lowering of an effective rate of any tax. This supermajority requirement could be waived when a declaration of war is in effect or when the United States is engaged in a military conflict which causes an imminent and serious threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law. Pursuant to the Necessary and Proper Clause of article I, section 8 of the Constitution, the Congress would have authority to enact implementing legislation.

The Tax Limitation Amendment is intended to force Congress to seriously consider alternatives to raising taxes when attempting to manage the budget. The amendment does not foreclose the possibility of raising taxes, closing loopholes, or improving enforcement of existing internal revenue laws. It simply requires a broad consensus before increasing taxes to raise additional revenue by more than a de minimis amount.

BACKGROUND AND NEED FOR THE LEGISLATION

According to the Congressional Budget Office, individual income tax revenues increased last year by 14.2 percent—125 billion dollars, and overall revenues increased by 10.8 percent—197.7 billion dollars.[2] With the exception of 1942, the overall amount of these revenues is a higher percentage of our Gross Domestic Product than at any other time in our history. While this proposal would not provide immediate relief for taxpayers, it will help direct the Federal Government to reduce wasteful spending, to ferret out fraud, and to eliminate ineffective programs before raising taxes. A supermajority vote is already required for several important governmental decisions.[3]

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[1] The United States Constitution provides the Congress the power to levy taxes. See U.S. Const., Art. I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises. . . ."); U.S. Const., Amend. XVI ("The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.").

[2] Congressional Budget Office, THE BUDGET AND ECONOMIC OUTLOOK: FISCAL YEARS 2002–2011, pp. 144–45, January, 2001.

[3] See U.S. Const., Art. I, § 3, cl. 6 (Senate conviction following impeachment trial); U.S. Const., Art. I, § 5, cl. 2 (Expelling a Member of Congress); U.S. Const., Art. I, § 7, cl. 2 (Overriding a Presidential veto); U.S. Const., Art. II, § 1, cl. 3 (Required quorum for House to choose President); U.S. Const., Art. II, § 2, cl. 2 (Senate concurrence to treaties); U.S. Const., Art. V (Proposing Constitutional Amendments); U.S. Const., Art. VII (State ratification of Constitution);

I. Application of the amendment

The supermajority requirement of H.J. Res. 41 would only apply to changes to the internal revenue laws. Any bill, resolution, or other legislative measure changing the internal revenue laws would require a two-thirds vote, unless it was determined that the bill's provisions, taken together, either raised revenue by less than a de minimis amount, decreased revenue by any amount, or were revenue neutral. In determining whether a bill increased the internal revenue, any increase resulting from the lowering of an effective rate of any tax would be excluded.

Generally, the phrase "internal revenue laws" covers taxes found in the Internal Revenue Code, such as income taxes (personal and corporate), estate and gift taxes, employment taxes, and excise taxes. The amendment would also cover future revenue laws even if they were not placed into the Code.[4] It would not cover tariffs, user fees, voluntary payments, or bills that do not change internal revenue laws, even if such measures increase the internal revenue by more than a de minimis amount.

II. The "de minimis" exception and implementing legislation

The term de minimis is not new to Federal law. It appears in approximately 80 statutes in the United States Code. An April 7, 1997 letter to then-Judiciary Committee Chairman Henry Hyde, from then-Ways and Means Committee Chairman Bill Archer discussed the meaning of the de minimis standard and the enactment of implementing legislation in connection with a bill similar to H.J. Res. 41 introduced during the 105th Congress:

> [T]he Constitutional amendment excepts from the ⅔ requirement tax legislation that raises no more than a de minimis amount of revenue. The amendment states that Congress may "reasonably provide" how this exception is applied. Details may be very important, but they do not belong in the Constitution. Instead, Congress would adopt legislation that implements the Constitutional amendment by defining terms and fleshing out procedures.
>
> It is up to this or a future Congress to design this "implementing legislation." However, it is my understanding and intent that such legislation will have the following characteristics:
>
> Revenue would be measured over a period consistent with current budget windows. For example, measuring the net change in revenue over a 5 year period would be appropriate.
>
> Estimation would be made employing the usual revenue estimating rules. As under the Budget Act, a committee of jurisdiction or conference committee would, in consultation with the Congressional Budget Office or the Joint Committee on Taxation, determine the revenue effect of a bill.

U.S. Const., Amend. XII (Required quorum to choose President and Vice President); U.S. Const., Amend. XIV, § 3 (Removing disability for holding office); U.S. Const., Amend. XXV, § 4 (Determining Presidential disability).

[4] The Internal Revenue Code, title 26 of the United States Code, is not explicitly referenced because Congress could avoid the application of the amendment by passing tax legislation and putting it elsewhere in the code or characterizing it in a different fashion.

> A bill would be considered to raise a de minimis amount of revenue if it increased Federal tax revenues by no more than 0.1 percent over 5 years.
>
> For purposes of determining whether a bill raises more than a de minimis amount of revenue, only tax provisions (i.e., provisions modifying the internal revenue laws) in the bill would be considered. Other provisions that increase Federal revenues or receipts (such as asset sales, tariffs, user fees, etc.) would not be taken into account in determining the revenue raised by the bill.[5]

Although opponents of H.J. Res. 41 have argued that a supermajority requirement would unduly burden Congress in closing so-called tax loopholes, the de minimis standard would actually permit a simple majority vote on certain measures that seek to close tax loopholes. Should Congress adopt the definition proposed by Chairman Archer, a simple majority vote would suffice for passage where the tax provisions in the measure, taken together, would not increase Federal tax revenues by more than one-tenth of 1 percent of Federal revenues over a 5-year period. Thus, so long as the revenue effect of provisions that close tax loopholes is offset by other provisions in the measure, such that the increase, if any, in revenue is "de minimis," a two-thirds vote will not be required.

III. Prior legislative action

During the 104th Congress, on April 15, 1996, H.J. Res. 159 failed to receive the required two-thirds vote for constitutional amendments by a vote of 241–157. That resolution would have required any bill that levied a new tax or increased the rate or base of any tax to receive a two-thirds majority of the whole number of each House of Congress.

During the 105th Congress, the Committee on the Judiciary conducted a markup of H.J. Res. 62 following a hearing conducted by the Subcommittee on the Constitution. Eight witnesses, including two Members of Congress, testified at the March 18, 1997 Subcommittee hearing. On April 8, 1997, the Committee ordered H.J. Res. 62 to be reported, as amended, by a vote of 18–10. See H. Rept. 105–50, 105th Cong., 1st sess. (1997). H.J. Res. 62, as amended, would have required, *inter alia*, any legislative measure changing the internal revenue laws to receive the concurrence of two-thirds of the Members of each House voting and present, unless the measure did not increase the internal revenue by more than a de minimis amount. But on April 15, 1997, the bill failed by a vote of 233–190.

In 1998, H.J. Res. 111 was introduced and was subsequently modified and deliberated pursuant to H. Res. 407, a rule for its consideration. Pursuant to H. AMDT. 553, section 1 of H.J. Res. 111 was amended to additionally state that "[f]or the purposes of determining any increase in the internal revenue under this section, there shall be excluded any increase resulting from the lowering of an effective rate of any tax." On April 22, 1998, H.J. Res. 111, as amended, failed by a vote of 238–186.

During the 106th Congress, H.J. Res. 37 failed on April 15, 1999 by a vote of 229–199, and H.J. Res. 94 failed on April 12, 2000 by

[5] H.R. REP. NO. 105–50, 105th Cong., 1st Sess., at 4 (1997).

a vote of 234–192. The bills were identical to each other and identical to H.J. Res. 111, 105th Congress, as amended, except that the bills introduced during the 106th Congress did not contain a section providing that Congress can enact enabling legislation. However, pursuant to the Necessary and Proper Clause of article I, section 8 of the Constitution, Congress still has authority to enact enabling legislation.

H.J. Res. 41, introduced during the 107th Congress on March 22, 2001, is identical to the bills introduced during the 106th Congress.

IV. State tax limitation laws

Currently, fourteen states have tax limitation provisions for all, most, or some tax increases. Out of the fourteen states with tax limitation provisions, eleven states require a supermajority for any tax increase (supermajority required in parentheses): Arizona (⅔); Arkansas (¾); California (⅔); Colorado (⅔); Delaware (⅗); Louisiana (⅔); Mississippi (⅗); Nevada (⅔); Oklahoma (¾); Oregon (⅗); and South Dakota (⅔). Missouri requires a ⅔ supermajority for most tax increases, Florida requires a ⅗ supermajority for corporate income tax increases only, and Michigan requires a ¾ supermajority for a certain type of property tax increase.

Barry W. Poulson, Professor of Economics at the University of Colorado, testified before the Constitution Subcommittee during the 105th Congress that when tax limitation provisions are incorporated into state constitutions, "they are more likely to constrain the growth of government" than statutory provisions.[6] Daniel Mitchell, McKenna Senior Fellow in Political Economy at the Heritage Foundation, who also testified before the Subcommittee on the Constitution during the 105th Congress, stated that empirical data from states suggests that supermajority requirements are successful in limiting the growth of government and in enabling a more rapid pace of economic growth and job creation. States with supermajority requirements have lower spending increases, faster economic growth, more jobs, and a more tightly-controlled tax burden than states without such requirements.[7]

V. Supermajority requirements and taxation

There is nothing undemocratic or unusual about supermajority requirements in our system of representative democracy. Supermajority voting requirements are routinely used for legislative business in both the House and the Senate. Since 1828, the House has allowed a two-thirds vote to suspend rules and to pass legislation. Senate rules require a two-thirds vote for suspension of the rules and for the fixing of time for considering a subject. The Senate requires a three-fifths vote of all Senators to end debate or to increase the time available under cloture. Senate Budget procedures require that three-fifths of the full Senate must agree to waive balanced budget provisions or points of order to consider amendments that would violate the budget approved by Congress. Moreover, there are ten instances in which the Constitution re-

[6] "Proposing an Amendment to the Constitution with Respect to Tax Limitations, 1997: Hearings on H.J. Res. 62 Before the Subcomm. On the Constitution of the House Judiciary Committee," 105th Cong., 1st sess. (written statement of Dr. Barry Poulson).

[7] "Proposing an Amendment to the Constitution with Respect to Tax Limitations, 1997: Hearings on H.J. Res. 62 Before the Subcomm. On the Constitution of the House Judiciary Committee," 105th Cong., 1st sess. (written statement of Daniel Mitchell).

quires a supermajority vote. Seven of these were part of the original Constitution and three were added through the amendment process.[8]

Opponents of H.J. Res. 41 point to the fact that one of the weaknesses that led to the demise of the Articles of Confederation was that the Articles required a supermajority vote to raise Federal revenue. It is true that the Framers of the Constitution did not impose a supermajority voting requirement to raise revenue. Their solution was far more severe—an explicit constitutional restriction on direct taxes.[9]

As explained by Alexander Hamilton in Federalist No. 21, the taxing ability of the Federal Government was intentionally limited:

> It is a signal advantage of taxes on articles of consumption [today called tariffs, sales and excise taxes] that they contain in their own nature a security against excess. They prescribe their own limit, which cannot be exceeded without defeating the end proposed—that is, an extension of the revenue. When applied to this object, the saying is as just as it is witty that, "in political arithmetic, two and two do not always make four." If duties are too high, they lessen the consumption, the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power of imposing them.[10]

Lawrence Hunter, President of the Business Leadership Council, testified before the Subcommittee on the Constitution during the 104th Congress that the original design of the Constitution carefully balanced the powers to tax and spend:

> In Madison's and Hamilton's original design, the taxing and spending authority of the Federal Government was hemmed in by the dual constraints of exclusive reliance on indirect taxes (which "prescribe their own limit") working side-by-side with the powerful constraint on spending resulting from the limited delegation of powers to the Federal Government. This limited delegation of powers severely restricted the objects and activities on which the Federal could spend money. In other words, the original constitutional design constrained both the means by which Congress spent (taxation) and the ends on which Congress spent (defined by a limited delegation of powers).[11]

As ratified, the Constitution allowed no direct taxation of the income of citizens. For three-quarters of our history, the power of the Federal Government to tax was carefully constrained by explicit constitutional restraints. It was not until the early 1900's that the 16th amendment swept away the Constitution's careful balance with respect to taxes. While in the 1780's, the Federal Government

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[8] See supra note 3.

[9] See U.S. Const., Art. I, §9, cl. 4 ("No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.").

[10] The Federalist No. 21 (Alexander Hamilton).

[11] "Amendment to the Constitution Requiring Two-thirds Majorities for Bills Increasing Taxes, 1996: Hearings on H.J. Res. 159 Before the Subcomm. On the Constitution of the House Judiciary Committee," 104th Cong., 2nd Sess. 75.

may have had a problem raising revenue, this is certainly no longer a problem today. As recently as 1940, Federal taxes were only 6.7% of the Gross Domestic Product. But according to the Congressional Budget Office, by the year 2000, Federal taxes had exceeded 20% of the GDP. Moreover, total Federal revenues exceeded $2 trillion as of 2000 with over $1 trillion of the revenues derived from individual income taxes.[12]

Under our current system it is too easy to add to the already onerous tax burden Congress has placed upon the American people. The adoption of a supermajority provision will force Congress to give careful consideration to proposals to raise taxes and will require a broad consensus in order to do so.

VI. Standing to sue under the tax limitation amendment

As a general matter, in order to file civil actions in Federal court, plaintiffs must have standing. Plaintiffs must demonstrate that they: (1) suffered an actual injury of the type for which a court may grant relief; (2) by some action of the defendant, and that; (3) the court will be able to redress the injury.

Prudential considerations, not rooted in the Constitution, also come into play. These rules require that (1) the defendant violated the plaintiff's legal right, not someone else's; (2) the plaintiff's injury is somehow differentiated from those of all other people in the country; and (3) the injury is of the type that the law or constitutional provision in question was designed to protect. Ordinarily, a taxpayer has no standing to sue the Federal Government for carrying out an arguably unconstitutional program that allegedly wastes the public's money. Most direct constitutional challenges to the exercise of the government's spending power are beyond judicial reach. The mere fact that the Federal Government did not act constitutionally in exerting its spending power does not provide a plaintiff with standing.

Under H.J. Res. 41, an increase in taxes does not automatically trigger a two-thirds vote. The proposed constitutional amendment does not create a legal right to have taxes raised only where there is a two-thirds vote. Therefore, a taxpayer would not have standing to sue merely because his tax burden was increased. The amendment requires Congress to determine "at the time of adoption, in a reasonable manner prescribed by law" whether the tax provisions in the legislation, taken as a whole, increase the internal revenue by more than a de minimis amount. Thus, a bill raising some taxes and lowering others, would not necessarily trigger a two-thirds vote. A court would be extremely reluctant to substitute its own judgment on the revenue effects of a particular piece of legislation for that of the Congress. Under current interpretations of "standing" rules, it is highly unlikely that a court would allow a taxpayer to challenge Congress' determination that a bill raised revenue by less than a de minimis amount.[13]

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[12] Congressional Budget Office, THE BUDGET AND ECONOMIC OUTLOOK: FISCAL YEARS 2002–2011, pp. 144–45, January, 2001.

[13] The strongest case for standing would be made where Congress failed to determine whether a bill changing the internal revenue laws increased the internal revenue by more than a de minimis amount. Even here, however, it is not entirely clear under the "standing" doctrine that a plaintiff whose taxes had been raised under such a scenario would have standing to sue.

VII. Differences between the tax limitation amendment and the House rule

The House rule for the 104th Congress required a three-fifths vote for any bill "carrying a Federal income tax rate increase." The rule was waived several times during the 104th Congress. At the beginning of the 105th Congress, the House rule was changed. Now, rule XXI, cl. 5(c) requires a three-fifths vote for any bill that "amends subsection (a), (b), (c), (d), or (e) of section 1, or to section 11(b) or 55(b), of the Internal Revenue Code of 1986, that imposes a new percentage as a rate of tax and *thereby increases the amount of tax* imposed by any such section." (Emphasis added).[14] The House rule, then, applies to amendments to certain sections of the Internal Revenue Code that increase tax rates even if the bill, taken as a whole, would reduce revenues.

In contrast, H.J. Res. 41 would not require a two-thirds vote for a bill that changed the tax rates if the tax provisions of the bill, taken together, either raised revenue by less than a de minimis amount, decreased revenue by any amount, or were revenue neutral. H.J. Res. 41 would undoubtedly make it more difficult for Congress to raise taxes, but it would still provide Congress with the flexibility to cut taxes, to close so-called tax loopholes, and to make revenue neutral changes to the tax laws.

HEARINGS

Because similar tax limitation amendments to the United States Constitution have been considered by the Congress, the Committee on the Judiciary did not hold hearings on H.J. Res. 41. H.J. Res. 41 is identical to tax limitation amendments that were considered in the 106th Congress, and the Subcommittee on the Constitution conducted a full day of hearings on a similar tax limitation amendment in the 105th Congress.

COMMITTEE CONSIDERATION

On April 4, 2001, the full Committee met in open session and ordered favorably reported the joint resolution H.J. Res. 41, by a vote of 17 ayes to 9 nays, a quorum being present.

VOTE OF THE COMMITTEE

1. Two amendments offered en bloc by Ms. Jackson Lee would have: (1) excluded any bill, resolution or other legislative measure that imposes an environmental tax, fee, charge or assessment from requiring a two-thirds majority vote; and (2) excluded any bill, resolution, or other legislative measure necessary to preserve the solvency of the Federal Old Age and Survivors Insurance Trust Fund or the Federal Disability Trust Fund, or any successor funds from requiring a two-thirds majority vote. The amendments were defeated by voice vote.

2. Amendment offered by Mr. Watt, which would have required a two-thirds majority vote for any bill, resolution, or other legisla-

[14] Section (1)(a) covers the tax rate for married individuals filing joint returns and surviving spouses. Section (1)(b) covers heads of household. Section (1)(c) covers unmarried individuals. Section (1)(d) covers married individuals filing separate returns. Section (e) covers estates and trusts. Section 11(b) covers the amount of tax on corporations. Section 55(b) covers the tentative minimum tax.

tive measure determined to decrease the internal revenue by more than a de minimis amount, was defeated by voice vote.

3. Amendment offered by Mr. Nadler, which would have excluded any bill, resolution, or other legislative measure designed to improve enforcement of the internal revenue laws from requiring a two-thirds majority vote, was defeated by voice vote.

4. Amendment offered by Mr. Frank, which would have excluded any bill, resolution, or other legislative measure necessary to preserve the solvency of the Federal Old Age and Survivors Insurance Trust Fund from requiring a two-thirds majority vote, was defeated 8 ayes to 16 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Barr			
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus			
Mr. Scarborough		X	
Mr. Hostettler		X	
Mr. Green		X	
Mr. Keller			
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff			
Mr. Sensenbrenner, Chairman		X	
Total	8	16	

5. Amendment offered by Mr. Watt, which would have limited judicial review to legislative compliance, was defeated 9 ayes to 16 nays.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Hyde			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (Texas)		X	
Mr. Gallegly		X	
Mr. Goodlatte			
Mr. Chabot		X	
Mr. Barr			
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Cannon		X	
Mr. Graham		X	
Mr. Bachus			
Mr. Scarborough		X	
Mr. Hostettler			
Mr. Green		X	
Mr. Keller		X	
Mr. Issa		X	
Ms. Hart		X	
Mr. Flake		X	
Mr. Conyers	X		
Mr. Frank	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Meehan	X		
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin	X		
Mr. Weiner	X		
Mr. Schiff			
Mr. Sensenbrenner, Chairman		X	
Total	9	16	

6. Amendment offered by Mr. Nadler, which would have excluded any bill, resolution, or other legislative measure repealing any industry-specific exemptions, deductions, or credits, was defeated by voice vote.

7. Motion by Mr. Sensenbrenner to favorably report the joint resolution H.J. Res 41 was agreed to, 17 ayes and 9 nays.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Hyde			
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (Texas)	X		
Mr. Gallegly	X		
Mr. Goodlatte			
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Cannon	X		
Mr. Graham	X		
Mr. Bachus			

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Scarborough	X		
Mr. Hostettler			
Mr. Green	X		
Mr. Keller	X		
Mr. Issa	X		
Ms. Hart	X		
Mr. Flake	X		
Mr. Conyers		X	
Mr. Frank		X	
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren			
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan		X	
Mr. Delahunt			
Mr. Wexler			
Ms. Baldwin		X	
Mr. Weiner		X	
Mr. Schiff		X	
Mr. Sensenbrenner, Chairman	X		
Total	17	9	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

H.J. Res. 41 does not authorize funding. Therefore, clause 3(c) of House Rule XIII is inapplicable.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the joint resolution, H.J.Res.41, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 13, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 41, a joint resolution proposing an amendment to the Constitution of the United States with respect to tax limitations.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John R. Righter (for Federal costs), who can be reached at 226–2860, and Shelley Finlayson (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.J. Res. 41—A joint resolution proposing an amendment to the Constitution of the United States with respect to tax limitations.

H.J. Res. 41 would propose amending the Constitution to require that any change to the nation's internal revenue laws pass both houses of Congress by a two-thirds vote. Current law requires that such measures pass by a simple majority. The amendment would except instances where it is determined the change in law would increase taxes by not more than a minimal amount. For the amendment to become effective, the legislatures of three-fourths of the states would be required to ratify it within 7 years of enactment.

By itself, this resolution would have no impact on the Federal budget. If the proposed amendment to the Constitution is approved by the states, then it would be more difficult for future Congresses to pass legislation increasing revenues through changes to the internal revenue code. Because enactment of H.J. Res. 41 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.J. Res 41 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act, and would impose no costs on state, local, or tribal governments. In order to become part of the Constitution, three-fourths of the state legislatures would have to ratify the resolution within 7 years of its submission to the states by the Congress. However, no state is required to take action on the resolution, either to reject it or to approve it.

The CBO staff contacts for this estimate are John R. Righter (for Federal costs), who can be reached at 226–2860, and Shelley Finlayson (for the state and local impact), who can be reached at 225–3220. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article V of the Constitution, which provides that the Congress has the authority to propose amendments to the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. This section requires any legislative measure changing the internal revenue laws to receive the concurrence of two-thirds of the Members of each House voting and present, unless the legislative measure is determined not to increase the internal revenue by more than a de minimis amount. The bill provides that for the purposes of determining any increase in the internal revenue, there shall be excluded any increase resulting from the lowering of an effective rate of any tax. In addition, section 1 provides that on any vote for which the concurrence of two-thirds is required under the bill, there shall be a roll-call vote of the Members of each House.

Section 2. This section provides that the Congress may waive the bill's requirements under two circumstances: (1) when a declaration of war is in effect; and (2) when the United States is engaged in military conflict which causes an imminent and serious threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law. But section 2 provides that any increase in the internal revenue enacted under such a waiver shall be effective for no more than 2 years.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, APRIL 4, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner [chairman of the committee] presiding.

Next, pursuant to notice, I now call up the bill H.J. Res. 41 proposing an amendment to the Constitution of the United States with respect to tax limitations for purpose of markup and move its favorable recommendation to the House.

[H.J. Res. 41 follows:]

IA

107TH CONGRESS
1ST SESSION

H. J. RES. 41

Proposing an amendment to the Constitution of the United States with respect to tax limitations.

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2001

Mr. SESSIONS (for himself, Mr. ADERHOLT, Mr. ANDREWS, Mr. ARMEY, Mr. BACHUS, Mr. BAKER, Mr. BALLENGER, Mr. BARCIA, Mr. BARR of Georgia, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mrs. BIGGERT, Mr. BILIRAKIS, Mr. BLUNT, Mr. BOEHNER, Mr. BONILLA, Mrs. BONO, Mr. BRADY of Texas, Mr. BRYANT, Mr. BURR of North Carolina, Mr. BURTON of Indiana, Mr. CALLAHAN, Mr. CALVERT, Mr. CAMP, Mr. CANNON, Mr. CASTLE, Mr. CHAMBLISS, Mr. COMBEST, Mr. CONDIT, Mr. COOKSEY, Mr. COX, Mr. CRANE, Mrs. CUBIN, Mr. CULBERSON, Mr. DELAY, Mr. DEMINT, Mr. DOOLITTLE, Mr. DUNCAN, Ms. DUNN, Mr. EHLERS, Mrs. EMERSON, Mr. ENGLISH, Mr. EVERETT, Mr. FOLEY, Mr. FOSSELLA, Mr. FRELINGHUYSEN, Mr. GALLEGLY, Mr. GIBBONS, Mr. GILCHREST, Mr. GILMAN, Mr. GOODE, Mr. GOODLATTE, Ms. GRANGER, Mr. GREEN of Wisconsin, Mr. GREENWOOD, Mr. HALL of Texas, Mr. HANSEN, Mr. HASTERT, Mr. HASTINGS of Washington, Mr. HAYWORTH, Mr. HEFLEY, Mr. HILLEARY, Mr. HOEKSTRA, Mr. HORN, Mr. ISAKSON, Mr. ISTOOK, Mr. JENKINS, Mr. JOHN, Mr. SAM JOHNSON of Texas, Mr. JONES of North Carolina, Mrs. KELLY, Mr. KNOLLENBERG, Mr. LAHOOD, Mr. LARGENT, Mr. LATOURETTE, Mr. LEWIS of Kentucky, Mr. LINDER, Mr. LUCAS of Kentucky, Mr. MALONEY of Connecticut, Mr. MANZULLO, Mr. MCINTYRE, Mr. MICA, Mr. MILLER of Florida, Mr. GARY MILLER of California, Mrs. MYRICK, Mr. NETHERCUTT, Mrs. NORTHUP, Mr. NORWOOD, Mr. OXLEY, Mr. PAUL, Mr. PETERSON of Pennsylvania, Mr. PICKERING, Mr. PITTS, Mr. POMBO, Mr. PORTMAN, Mr. QUINN, Mr. RADANOVICH, Mr. RAMSTAD, Mr. RILEY, Mr. ROHRABACHER, Mrs. ROUKEMA, Mr. ROYCE, Mr. RYAN of Wisconsin, Mr. RYUN of Kansas, Mr. SAXTON, Mr. SCARBOROUGH, Mr. SCHAFFER, Mr. SENSENBRENNER, Mr. SHADEGG, Mr. SHIMKUS, Mr. SHOWS, Mr. SIMPSON, Mr. SKEEN, Mr. SMITH of Texas, Mr. SMITH of Michigan, Mr. SOUDER, Mr. SPENCE, Mr. STEARNS, Mr. STUMP, Mr. SUNUNU, Mr. SWEENEY, Mr. TANCREDO, Mr. TAUZIN, Mr. TAYLOR of North Carolina, Mr. TERRY, Mr. THUNE, Mr. TOOMEY, Mr. TRAFICANT, Mr. WALDEN of Oregon, Mr. WAMP, Mr. WATTS of Oklahoma, Mr. WELDON of Pennsylvania, Mr. WELDON of Florida, Mr. WELLER, and Mr. YOUNG of Alas-

ka) introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States with respect to tax limitations.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

"SECTION 1. Any bill, resolution, or other legislative measure changing the internal revenue laws shall require for final adoption in each House the concurrence of two-thirds of the Members of that House voting and present, unless that bill, resolution, or other legislative measure is determined at the time of adoption, in a reasonable manner prescribed by law, not to increase the internal revenue by more than a de minimis amount. For the purposes of determining any increase in the internal revenue under

this section, there shall be excluded any increase resulting from the lowering of an effective rate of any tax. On any vote for which the concurrence of two-thirds is required under this article, the yeas and nays of the Members of either House shall be entered on the Journal of that House.

"SECTION 2. The Congress may waive the requirements of this article when a declaration of war is in effect. The Congress may also waive this article when the United States is engaged in military conflict which causes an imminent and serious threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law. Any increase in the internal revenue enacted under such a waiver shall be effective for not longer than two years.".

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Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

The Chair strikes the last word and recognizes himself for 5 minutes.

H.J. Res. 41, introduced by Congressman Pete Sessions, is known as the Tax Limitation Amendment. This legislation would establish a constitutional amendment requiring a two-thirds majority vote by Congress for any bill that increases the internal revenue by more than a de minimis amount. However, this amendment would not require a two-thirds vote for every tax increase. For example, a bill that both lowered and increased taxes, if it were revenue-neutral, would not be subject to the two-thirds vote requirement, nor would a bill intended to raise revenue by reducing taxes.

In addition, the two-thirds majority requirement would be waived when a declaration of war is in effect or when both houses pass a resolution which becomes law stating that the United States is engaged in a military conflict which causes an imminent and serious threat to national security.

Currently, 14 States have adopted tax limitation amendments. According to statistics provided by the Bureau of Economic Analysis, these States have benefitted from greater rates of increased employment, greater economic growth, decreased government spending, and decreased rates of tax growth.

Although similar amendments have been unsuccessfully considered by the House over the past few years, the need for tax reform has never been greater. According to the CBO, with the exception of 1942, the overall amount of individual income tax revenues is a higher percentage of our gross domestic product than in any other time in our history, and today, we're not combatting either fascism or communism.

The bottom line is that taxes today are too high. Federal, state and local taxes consume about 40 percent of the income of the average family. That's more than the average family spends on food, clothing and shelter combined.

As Congress debates meaningful tax relief for the American people, today is an important time to recognize that Congress' voracious appetite for spending still endures. That's why I think it's more important than ever for this committee and this Congress to reconsider and support the measure that will make it more difficult for Congress to raise taxes in the future.

Inevitably, there will come a time when Congress wishes to spend more and will not have budget surpluses to reply upon. There will be many inside the Washington Beltway who argue that in order for Congress to spend more, we will need to take more from the hard-working citizens in places like Madison, Wisconsin; Detroit, Michigan; Los Angeles, California; Houston, Texas; Murrysville, Pennsylvania; Egan, South Carolina, and every other area, large and small, across our great nation. However, I believe that this is the wrong approach and there is another way to meet our nation's priority, and that's by tightening our belt and reducing wasteful spending, ferreting out fraud, and eliminating ineffective programs. Raising taxes should be a last-ditch option and should occur only after careful consideration with broad consensus.

Although a constitutional amendment is a big step, I believe our history of tax hikes illustrates that this is an important step that

will bring needed discipline to Congress and relief to the American people.

I urge the passage of this resolution and yield back the balance of my time.

For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. For an opening statement.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes to strike the last word.

Mr. NADLER. Thank you, Mr. Chairman.

I regard it as very unfortunate that this committee is wasting its time with this old chestnut when we're not, for example, looking into the questions of electoral reform or the question that the President has put before us of faith-based initiatives as the minority has requested. These are real issues that are currently before us. We know that this amendment is not going to pass, it has gone nowhere in the last, what, four congresses, but if we're going to waste the time, we're going to waste the time.

Let me talk to the merits, or rather demerits, of this bill. The bill is profoundly—or the constitutional amendment is profoundly anti-democratic. Profoundly anti-democratic. The Congress represents the American people and ought to be able to act on any subject by—except amending the Constitution, by majority vote. If the people want the taxes lowered, Congress should do that by majority vote. If the people want the taxes raised, Congress should do that by majority vote. If the present political consensus today is that taxes should be lowered, so be it, but by what right do we hamstring our successors 20 or 30 or 40 or 100 years from now who may face circumstances where they judge and the American people by 55 or 60 percent judge that taxes should be raised? We don't know what the circumstances are going to be and it's not for us to make that determination. Our successors, elected by the American people in the future, should make these determinations.

Now, today we may think the political philosophy of the majority of the country may be that taxes should be lowered. Fine. But who knows what the story will be 50 years from now or 100 years from now?

What this bill says is that one-third of the Congress members at any point in the future can—one-third plus one can thwart the will of almost two-thirds of the American people as represented in Congress. That's exactly the opposite way of where our democratic government ought to go.

Secondly, it sets up a one-way ratchet situation. Let's assume that we decide that taxes ought to be lowered and we estimate that by lowering it in a certain way, that will cut $100 billion of revenue. It turns out the estimate was wrong; it cuts $150 billion of revenue. Most people want to say, no, no, no, we intended a $100 billion tax cut. Oh, but you can't correct it because the majority vote can only go down, the majority vote can't go up, you need a two-thirds vote. It should be the same, it should be majority to go up or down, it should be two-thirds to go up or down if we want to be anti-democratic. We set up a one-way ratchet because we prefer cutting taxes, and certainly all of us prefer cutting to increasing taxes, and that's—but that's for the American people to decide at elections.

Thirdly, the way the bill is written, any revenue measure, any bill amending the Internal Revenue Code that is determined—needs a two-thirds vote unless it is determined not to increase the internal revenue by more than a de minimis amount. So if we find that people are cheating and we decide to put in better enforcement mechanisms, that would bring in more revenue, no, no, you can't do that except by a two-thirds vote because that would increase the internal revenue, we should let the cheats get away.

If we find that some huge corporation has found a loophole that nobody intended and that lets them pay no tax at all? Oh, you can't correct that loophole without a two-thirds vote because that's increasing the internal revenue.

And if we decide that we ought to—well, that's sufficient. You can't change enforcement, you can't close loopholes, and we thwart the will of the American people.

This is a profoundly anti-democratic amendment, it seeks to enact into law the political philosophy at a given moment—of some people at a given moment in history, and that is wrong to bind our successors.

If the American people by a majority want to raise taxes, they ought to be able to do it; to lower taxes, they ought to be able to do it; and we have no business telling our successors 50 or 100 years from now what they can and cannot do except in terms of violating the Bill of Rights because of our political opinions or prejudices.

This is a profoundly unwise amendment and it's a waste of our time. I hope the committee will get on to dealing with contemporary issues soon.

Thank you, Mr. Chairman.

The Chair will declare a recess for us to go and vote. Please come back promptly, because after the rule on the estate tax repeal is voted on, we're supposed to have three or four votes in a row on motions held over from yesterday and it would be nice if we didn't have to come back after lunch.

The committee is in recess.

[Recess.]

[Staff Note: Intervening Business.]

Chairman SENSENBRENNER. The committee will be in order.

Let the Chair say that we've got about an hour to be able to consider this joint resolution. The Chair really would like to avoid coming back after lunch, but we have to get this out today because leadership has scheduled it for the first week after the recess.

For what purpose does the gentleman from Michigan seek recognition?

Mr. CONYERS. I ask unanimous consent to add my statement to the record, and I would like to point out, after Mr. Nadler has made his profound analysis about how anti-democratic this is, I would like to point out that this is very, very much a Republican amendment, and I ask unanimous consent to add my statement to the record.

Chairman SENSENBRENNER. Without objection, and without objection, we will change the small "d" in Mr. Nadler's speech to a large "D."

[The statement of Mr. Conyers follows:]

PREPARED STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

I am opposed to this amendment because it is bad for our democracy and bad for our tax policy.

By requiring a two-thirds majority to adopt certain legislation, the amendment undercuts majority rule and diminishes the vote of every Member of the Congress. The framers wisely rejected requiring a supermajority for basic government functions, and *James Madison argued that under a supermajority requirement, "the fundamental principle of free government would be reversed. It would no longer be the majority that would rule; the power would be transferred to the minority*."

In addition, the amendment would permanently enshrine some $450 billion of special corporate tax favors into the Constitution, nearly three times as much as all means tested entitlement programs combined. It would be next to impossible to change the law to require foreign corporations to pay their fair share of taxes on income earned in this country, or to repeal loopholes which encourage United States companies to relocate overseas. *In fact, under this amendment it would take more votes to close a tax loophole engineered by a powerful interest group than to cut Social Security, Medicare, and education programs*.

The amendment would also make major deficit-reduction measures much harder to pass when they are needed. Five of the six major deficit-reduction acts that were enacted since 1982 included a combination of revenue increases and program cuts. President Reagan signed three of these measures into law, and Presidents George H.W. Bush and Clinton signed one each. None of the five measures received a two-thirds majority in both houses, *so had the proposed constitutional amendment been in effect during this period, substantial budget deficits would still be with us today*.

Finally, *I would remind the Members that this amendment is the height of hypocrisy*. Three Congresses ago, the Majority changed the House Rules so they could not increase tax rates without a three-fifths vote. But on six separate occasions since then the Majority ignored or waived their own House Rule. *If the supermajority requirement didn't work as a House rule, why in the world would it work any better as a constitutional amendment?*

It's time the Majority got serious about the business of governing this country. A super-majority requirement has been rejected each of the last five years. Voting on this purely symbolic gesture one more time won't change anything. It's unworkable. We need to consider real solutions to our problems, not end majority rule as we know it.

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio seek recognition?

Mr. CHABOT. For the purpose of making an opening statement.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

The overall amount of money taken in taxes in this country is simply too high, and that adds to the difficulties many families face in making ends meet.

Congress should reduce the tax burden on all Americans, but at the very least, we must act to protect hard-working families from future increased taxation. By making it more difficult to raise taxes, H.J. Res. 41 will do just that. H.J. Res. 41 would require Congress to focus on options other than raising taxes to manage the Federal budget, helping to impose fiscal discipline and to constrain the growth of government. This legislation would not foreclose the possibility of raising taxes under any circumstances; rather, a supermajority is required to achieve that goal.

This is definitely very useful legislation. Currently 14 States have tax limitation provisions for all, must or some tax purposes. The Tax Limitation Amendment will cover personal and corporate income taxes, estate and gift taxes, employment taxes, and excise taxes. The amendment would not apply to tariffs or user fees or voluntary payments or bills that do not change the internal revenue laws even if they have revenue implications.

For purposes of determining whether a bill raises more than a de minimis amount of revenue, only tax provisions in the bill would be considered. Legislation that is roughly revenue neutral would not be subject to a two-thirds vote. For example, a bill that closed a tax loophole would not require a two-thirds vote if it created less than a de minimis increase in revenue or was accompanied by a tax cut.

The amendment states that a determination must be made at the time of the adoption of legislation as to whether it raises the internal revenue by more than a de minimis amount. In order to implement the amendment, Congress will need to adopt legislation defining terms and flushing out the necessary procedures.

Assuming ratification by the requisite number of States will not occur by the end of this Congress, it will be up to a future Congress to design this implementing legislation once the amendment has taken effect.

As I have observed many times before, Mr. Chairman, we need this amendment to help stem the tax-and-spend policies that too often rule Washington. Much of what goes on in this town involves the taking and spending of other people's money. Average Americans now have to spend most of their time working just to cover their tax burden and hopefully have enough left over to maintain a reasonable standard of living for themselves and their families.

In the 1950's, the Federal Government, for example, took about 5 percent of the average American family's money, and that was after fighting World War II and the Korean War; yet, since then, in peacetime with a generally strong economy, that figure has increased five-fold. Today, the Federal Government takes about a quarter of what we earn, and I'm not sure anyone here would even suggest that the Government has gotten 500 percent better.

Since '92 alone, the Federal Government has raised taxes at the gas pump, on working seniors receiving Social Security, on mom-and-pop small businesses, et cetera; yet, the average family's real after-tax income has not really increased over the years. At best, working families are just treading water, and the Government keeps trying to soak them in order to fund more and more often wasteful Government programs.

The House is now initiating meaningful change by reducing income tax rates, providing marriage tax penalty relief, doubling the child tax credit, and today getting rid of the onerous death tax, but these are precarious victories that can too easily be reversed by future congresses and future administrations.

The solution has always been smaller, more efficient government, and this amendment would force the Congress to make responsible budget choices first instead of enacting knee-jerk policies that drain the wallets of average Americans at every turn; therefore, I encourage my colleagues to support this important amendment to the Constitution.

I yield back the balance of my time.

Chairman SENSENBRENNER. Can we get to amendments? Are there amendments?

For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I was trying to strike the last word, Mr. Chairman, if the Chairman doesn't mind.

Chairman SENSENBRENNER. If the gentleman insists on striking the last word, the gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman, and I'm the first to concede that the members of the committee who have been here before can just turn off their microphones or close their ears because they have heard this speech or some variation of it before, and so I'm going to primarily direct this to the new members of the committee. The older members can go back and just replay this speech because I have given it, some variation of it, several times.

The thing that probably amazes me more than anything else about my conservative colleagues in this Congress since I have been here is two things. Number one, they say that they are conservative, and number two, their egos are big enough to think that what they can do to the Constitution is more valuable than 200 or more years of experience, and that George Washington and the folks who drafted this Constitution must have been stupid.

I found that out primarily in the 104th Congress when the Gingrich revolution came in. It was in that Congress that 118 proposed constitutional amendments were introduced, the bulk of which were by the conservatives who were claiming that they were conservative yet trying to amend the most conservative document that we have ever had and trying to change in dramatic ways the principles that we had founded our government on. In that Congress, four of those constitutional amendments were actually voted on on the House floor.

In the 105th Congress, 86 constitutional amendments were introduced and six of those were actually voted on on the House floor. This is at a time when the conservatives were telling me that they were in control of the schedule. These same conservatives, who I think are really revolutionaries rather than conservatives—I think you've lost sight of what a conservative is.

In last Congress, 52 proposed constitutional amendments were introduced and three were voted on on the House floor.

So I just think you all have some notion that being a conservative has something to do with amending the Constitution. I actually was taught just the opposite of that, and so I really—I really have some serious concerns with your underlying proposition there that, number one, amending the Constitution is a conservative step, and number two, that people like Sessions in Idaho and people in this Congress are a lot brighter than the people who drafted the Constitution originally.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WATT. Beyond that——

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. WATT. —let me just—I'm happy to yield to the gentleman. I just want to make one other point and then I'm going to quit and I'll yield all the rest of my time to you.

The other practical problem, in addition to the one that Mr. Nadler alluded to about this being just absolutely undemocratic and upsetting the whole balance that was contemplated in a democratic society, is the practical problem that was illustrated to me yesterday when a constituent called me and said, well, you can cut these taxes because if the projections that we have are wrong, then you can just pass something to reverse it. And I said, well, that I assure you is a lot more difficult than cutting taxes in the first place.

But now you are trying to make it inordinately more difficult. If these projections that all of us know have a large margin of error are, in fact, in error, then at some point, we're going to have to come back and hopefully do something about that. I'm sure some of you will say you're conservatives and—and that that just means tightening the belt and reducing spending, but I think you are—you are unbalancing the democratic——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT. —playing field. I ask unanimous consent for 30 seconds, and I'll yield it to—or a minute or whatever the Chairman needs, and I'll yield——

Chairman SENSENBRENNER. I'll hold my fire. The gentleman has expired.

The gentleman from Massachusetts.

Mr. FRANK. Thank you, Mr. Chairman. I don't think——

Chairman SENSENBRENNER. Five minutes.

Mr. FRANK. I don't think they are going to be dilatory amendments, but as I've looked at the amendments, they really go to specifics, and I think it would be wrong for me to try to make my general comments under that rubric because we are talking about a very fundamental proposal—a proposal of a very fundamental shift in American—the government, essentially to lessen the people's role here.

It's interesting that conservatives apparently believe that if we go by normal majority procedures, they won't do well, so they want to change the rules. I found something very interesting in my political career. Whichever side complains that the other side is demogaging or politicizing the issue is the side that recognizes it's in the political minority, I mean for a while. That is, both sides have tended to complain from time to time that people are politicizing an issue. Horror is that 535 politicians would politicize an issue. People who don't want issues politicized should never entrust them to 535 elected officials.

But what we now have is a permanent effort in this regard by the conservatives. They clearly are disappointed by the American people who have been insufficiently willing to oppose tax increases from time to time.

Now, I think there have been some important tax increases that wouldn't have gone through. I did notice the gentleman from Ohio listed as one of these unfortunate tax increases the gasoline tax increase of 1993. I have also noticed that now that the Republican party has the President, both houses of Congress, and certainly a sympathetic ear at the Supreme Court, or 10 sympathetic ears at the Supreme Court, this terrible gasoline tax, about which we heard so much, isn't going to be changed. I haven't seen the proposal to cut the gasoline tax. You're in power, you have the President, you have both houses of Congress, you're passing all kinds of tax bills. Has that terrible gasoline tax increase of 1993 grown on you? Have you suddenly found merit in it that you never found before? That would not have passed.

Apparently the majority now is happy that it passed because certainly the Republicans could, if they wanted to, do away with the gasoline tax increase of 1993, and it seems to me now that they apparently have decided that it was a good thing that that got through by one vote.

I remember—I was here during Ronald Reagan. I remember a couple of tax increases Ronald Reagan asked us to vote for. Ronald Reagan in 1982, with the leadership of then Senator Dole, pushed through a tax increase to partially undo the tax cut of 1981.

Now, I didn't vote for that at the time. I thought that particular Republican tax increase was not well constructed, but the Reagan people thought it was very important to the economy. My recollection is that if you had your two-thirds in there, Ronald Reagan wouldn't have gotten that tax increase.

And then came 1983 when Ronald Reagan and Tip O'Neill collaborated to raise Social Security taxes, and people who talk about the need of people who are on Social Security to pay taxes on their Social Security. The first piece of that, the taxation of 50 percent of people's Social Security benefits if they are making more than $25,000 a year, that was enacted by the Congress at the request of Ronald Reagan with the support of Tip O'Neill and Bob Dole. I don't think it got two-thirds. I didn't vote for that one, either. I didn't think that was well done, it put off the cost-of-living increase. So I think the Republican party is being a little shortsighted because they are forgetting that at times when they were in power, they were for tax increases.

And then, of course, George Bush's lips would never have moved if he needed two-thirds to move them. George Bush's lips were moved by a majority in 1990, not by two-thirds, and again—and so what I'm struck by is the repudiation of the Bush and Reagan tax cuts here. As I said, Ronald Reagan pushed through a couple of tax increases, not tax cuts, but tax increases. I'm not talking about the '86 one, I'm talking about the '82 and the '83 tax increases. And I don't know, is this kind of some compensatory thing? You'll name things for Ronald Reagan on the one hand, but on the other hand, you'll change the Constitution to make it impossible to do the things that he did?

I mean, I have always read that the Republicans thought that one of their advantages—one of their benefits that they gave the country was that they saved Social Security. Well, they saved it in part by a tax increase, and this, of course, would have made it impossible. But the fundamental point is that it's just not democratic, it's not majority rule.

Now, there are elements in our Constitution that already prevent majority rule, specifically the two States—two senators per State, and that was because of the political bargain they made. But apparently what the conservatives are now saying is, if we play by what we've always considered to be the fair rules—majority wins—and we count the majority of the votes, if we count the majority of people elected, if we count the majority of people elected in the United States House of Representatives, we'll lose a few, and we don't want to do that, and so therefore we are going to change the Constitution to say you can't raise taxes; we're not going to change the Constitution to say you can't protect Social Security or that you can't protect Medicare; we're not even going to change the Constitution to say you need two-thirds to go to war; we're talking about changing the Constitution to favor a particular ideology that——

Chairman SENSENBRENNER. The gentleman's time has expired.

Are there amendments?

For what purpose does the gentlewoman from Texas, Ms. Jackson Lee, seek recognition?

Ms. JACKSON LEE. Thank you, Mr. Chairman. I have two amendments at the desk, Amendments 1 and 2, that I would appreciate taking en bloc.

Chairman SENSENBRENNER. Without objection, the amendments will be considered en bloc. The Clerk will report the amendments.

[Amendments 1 and 2 to H.J. Res. 41 offered by Ms. Jackson Lee follow:]

AMENDMENT 1—AMENDMENT TO H.J. RES. 41
OFFERED BY MS. JACKSON LEE OF TEXAS

Add at the end the following:
SECTION. The requirements of this article do not apply to any bill, resolution, or other legislative measure that imposes an environmental tax, fee, charge, or assessment.

AMENDMENT 2—AMENDMENT TO H.J. RES. 41
OFFERED BY MS. JACKSON LEE OF TEXAS

Add at the end the following:
SECTION. The requirements of this article do not apply to any bill, resolution, or other legislative measure necessary to preserve the solvency of the Federal Old Age and Survivors Insurance Trust Fund or the Federal Disability Trust Fund, or any successor funds.

The CLERK. Amendment to H.J. Res. 41 offered by Ms. Jackson Lee, Amendment 1 and Amendment 2. Add at the end the following: Section: The requirements of this article do not apply to any bill, resolution, or other legislative measure that imposes an environmental tax, fee, charge or assessment.

Chairman SENSENBRENNER. Without objection, the amendments are considered as read and the gentlewoman from Texas is——

Mr. LEE. Mr. Chairman?

Chairman SENSENBRENNER. Yes?

Mr. LEE. Are we doing them one at a time or en bloc?

Chairman SENSENBRENNER. En bloc.

Mr. LEE. So she should read the second one, too.

Chairman SENSENBRENNER. Okay. The Clerk will continue reading. The objection is heard.

The CLERK. Amendment 2. At the end—at the end, the following: Section: The requirements of this article do not apply to any bill, resolution, or other legislative measure necessary to preserve the solvency of the Federal Old Age and Survivors Insurance Trust Fund or the Federal disability trust fund or any successor funds.

Ms. JACKSON LEE. Thank you.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Let me raise a general perspective of opposition to the legislation and speak then to my amendments, and that is, of course, the diminishing impact that this has on the individual votes of members of the United States House of Representatives, in particular noted as the People's House.

I would say to you, Mr. Chairman, factually that it is well known that our taxes in America are less than many of our European neighbors, as well as our debt and deficit, which we appreciate, and so I would offer to say that a constitutional amendment, which we

have certainly voted on in many instances before and it has not passed, really should answer dire circumstances, and the question is, do we have dire circumstances to warrant diminishing my vote or any other vote of any other member of the United States House?

The first amendment speaks to our priorities and our values. I would offer to say that this amendment eliminates the provision on the impact of an environmental tax, fee, charge, or assessment that would cause us to be able, if you will, to support a super fund and compensation for health damages and dealing with the public safety and environmental programs which are so very vital to this country, particularly, for example, as we move through this tragic repeal of the arsenic quality in water. There may be instances once this works its will through Congress that we would want to compensate some of our citizens for the intake of arsenic; But in particular, a recent example, of course, was the hazardous oil spill of the Exxon Valdez where it was necessary to use Federal funds to clean it up.

I would simply say to my colleagues that we're doing great damage and great danger by preventing—putting these particular funds in jeopardy.

Amendment Number 2 goes to the issue of dealing with the preservation of the solvency of the Federal Old Age and Survivors Insurance Fund of the disability—or the disability trust fund or any successor funds.

I think, again, I go to the point of whether or not these are dire circumstances that require a constitutional amendment that, in fact, extinguishes the rights of my constituents to protect Social Security. I would hope that we would, in fact, support this amendment to shore up Social Security and Medicare and not allow a two-thirds provision, if passed, to interfere with the responsibilities that we have for Medicare and Social Security and its solvency. This constitutional amendment would do great damage, and I would ask my colleague to support both amendments.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. JACKSON LEE. I yield back.

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio seek recognition?

Mr. CHABOT. Mr. Chairman, I rise to oppose the amendments, both.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I will be relatively brief.

Our position would be that there is no reason to make the exceptions which are called for in these two amendments. We agree that we clearly should protect the environment, we agree that we should protect Social Security and Medicare, but the purpose of this constitutional amendment is simply to make it more difficult to raise taxes. There is no reason to believe that these amendments would add anything to the amendment, and for that reason, we oppose it.

Chairman SENSENBRENNER. Would the gentleman yield?

Mr. CHABOT. I'll be happy to yield to the Chairman.

Chairman SENSENBRENNER. I would just point out that both the Social Security amendments of 1983 and the Super Fund law were passed by over two-thirds margins in the House of Representatives and the Senate. So even if this amendment were in place, the rev-

enue that the gentlewoman from Texas is talking about would have been there and the tax increase would have been collected on the American people.

I thank the gentleman for yielding.

Mr. CHABOT. Thank you. And I yield back the balance of my time.

Chairman SENSENBRENNER. The question——

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Strike the last word on the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I would, in response to the gentleman from Ohio, just point out that it would just be more difficult to improve Social Security. But let me just say that, Mr. Chairman, this constitutional amendment will not affect spending; it only affects paying for the spending. You can increase spending and enact new programs with the simple majority. To pay for those programs under this amendment, under the bill, would—to pay for it would require two-thirds.

Now, as the gentleman from North Carolina has suggested, this year, we have not had any hearings, there has been no subcommittee mark, and I think that's deliberate because the more we actually consider this, the worse the bill looks.

For example, two-thirds required to increase revenue by more than a de minimis amount. If we had had a hearing, we might have had to listen to Jim Miller again, a high-ranking Reagan appointee, who said that de minimis was an unworkable standard; or listen to several witnesses pontificate about the exact meaning of "increase the internal revenue"; or hear about Section 2 that suggests that if we're engaged in a military conflict and pass a joint resolution which becomes law, does that mean it becomes law without the President's signature, the President can't veto the bill?; or hear what happens when there's a dispute. The Speaker of the House says the bill passes; somebody says no, you needed two-thirds; you didn't get two-thirds. Who is going to resolve that dispute?

Maybe if we had a hearing, Mr. Chairman, we would have to hear senior citizens explain that in a budget crunch, you can cut Social Security with a simple majority, but it takes a two-thirds vote to close corporate loopholes.

We might even hear about the half-trillion dollars every year we spend in tax expenditures and, in fact, if you are passing a bill with just transient support, you don't know whether it's going to be there next year, but you've got the majority this year, you might pass an appropriation in the form of a tax expenditure rather than a straight appropriations because it would take two-thirds vote the following year to reverse that tax expenditure.

We might have to hear, as the gentleman from New York, Mr. Nadler, pointed out, that if you make a mistake and you drain the—and a tax bill drains—tax cut drains the budget a lot more than you thought it would, it would take two-thirds vote to correct that mistake.

If we had a hearing, we might consider, is this amendment—is these amendments considered—we might consider the impact that it would have on the environment, might have to consider the impact it has on Social Security or our ability to provide a prescription drug benefit under Medicare.

But since we haven't had a hearing, we just have to go through the charade and try the best we can with amendments without the hearings, without the subcommittee mark, and do the best we can.

I think these amendments are very meritorious and I would hope that we would adopt these amendments.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you.

I just want to expand on what the gentleman from Virginia was saying. This is an amendment to the United States Constitution we're considering. We haven't had a subcommittee hearing, we haven't had a committee hearing, we haven't had any hearings, maybe because we're afraid of what we'll hear at those hearings or maybe because we know this is a joke and nobody takes it seriously.

Look at the absences on both sides of the aisle on this committee, look at the crowd out here, look at the legions of the press. Everybody knows this is a press release and not a serious consideration of a constitutional amendment.

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. NADLER. No, I won't, not on this point. Yes, I'll yield. Yes, I'll yield.

Chairman SENSENBRENNER. Okay. Let me say that it is only as a result of the Chair's insistence that the regular order be followed that we are here today, because the leadership said this bill is coming up the week after we get back——

Mr. NADLER. Reclaiming my——

Chairman SENSENBRENNER.—and if we don't have a markup, it will be brought directly to the floor.

Mr. NADLER. Reclaiming my time. This——

Chairman SENSENBRENNER. Please give the Chair a little credit where credit is due.

Mr. NADLER. I will give the Chair the credit. I will just point out that what that simply emphasizes is how much of a joke the leadership of this House thinks this is. The present leadership of this House, the Speaker, whoever else made that threat to the Chairman of the committee, obviously doesn't consider this seriously as a constitutional amendment if they're willing to dispense with any committee consideration, so we have no subcommittee consideration, no hearings, a markup, but it's coming up. Why next week? It's got to be done before April 15th, that's when the press release is due because that's the day people have to file their income taxes.

Now, this would be tragic if there were a snowball's chance in hell that this bill would survive on the floor of the House. We know that's not going to happen, we know it's not going to pass the House or the Senate by a two-thirds vote, thank God, but we have

to go through this charade nonetheless because we must have the press release.

Frankly, I will express again what I said in my opening statement. I hope that this committee can get down to business and deal with serious concerns that we haven't had hearings on such as the President's proposal for faith-based initiatives. I see that Mr. Watts and—J.C. Watts and others are introducing a bill; we ought to be taking a look at that. This is part of our responsibility. I won't characterize the bill or the whole initiative—I have my questions about it—but the fact is it certainly implicates serious questions about the First Amendment, the Bill of Rights, which are the province of this committee, and we're not doing anything about this but wasting our time on charades and press releases such as this bill.

Now, I urge the adoption of Ms. Watts—of Ms. Jackson Lee's amendments and the amendments that I will introduce as mitigating the damage of the press release.

Thank you, Mr. Chairman.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek recognition?

Mr. FRANK. To strike the requisite number of words.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. Thank you, Mr. Chairman.

First I want to credit you for throwing yourself however temporarily in the way of this locomotive. I realize that it's got to pass over you or through you. But I appreciate your honesty in telling us that it was the desire of the Republican leadership to bring the bill to the floor whether or not there was committee consideration.

I do remember that the previous chairman was less unhappy about that because his feeling always was that the less he had to do with this distortion of the American Constitution, the better he liked it.

I have a particular concern with regard to the Social Security trust fund. This talks about the gentlewoman's amendment, exempting from this two-thirds requirement a bill necessary to preserve the solvency of the Federal Old Age and Survivors Insurance Trust Fund.

Now, doing that is not controversial. How you correct it could be controversial, and let me give you one specific proposal that would be made very difficult, even more difficult, if this were to pass.

One of the single most egregiously unfair thing in the Federal tax code is the fact that the payroll tax cuts off at about $75,000. As a single Member of Congress, my salary is about 145,000; I have no dependents. I pay less in dollars, not percent, I pay less in dollars in Social Security tax for the Social Security system, not Medicare, than a married couple, each of whom makes $40,000 a year and has a couple of dependents, because between them, they are taxed on the full $80,000 they earn, each being—earning $40,000.

Now, I think that's egregiously unfair, and one of the proposals that many of us have had is to change that by increasing the level at which payroll taxes are no longer applied. We do know that payroll taxes are partly returned to you, but they partly are a system

of helping other people, disability people—people with disabilities, et cetera.

A proposal to take the cap off the Social Security payroll tax and make it more progressive with the funds from that devoted to the Survivors Insurance—Old Age and Survivors Insurance Trust Fund would be affected by this amendment. So anyone who has supported the idea of making the Social Security payroll tax less regressive, an idea the current Republican leadership ignores but I think has a lot of appeal, would find that two-thirds would be required to do that; that is, if you wanted to increase the level at which you impose the taxes and put that money into the Social Security trust fund—now, we're told we need to look into Social Security and make it more secure. One reasonable way to do it would be—even if we wanted to go to $100,000 or $125,000 or perhaps we might want to exempt the first $25,000 of income and then add; in other words, give a break to people at the low end——

Mr. ISSA. Mr. Chairman, point of order.

Chairman SENSENBRENNER. The gentleman will state his point of order.

Mr. ISSA. I truly hate to interrupt, but we've all called to end this debate as quickly as possible. Could I ask that the gentleman stick to germane subjects related to this, the bill before us?

Mr. FRANK. Mr. Chairman, if I may be heard on that——

Chairman SENSENBRENNER. The gentleman from Massachusetts will confine his remarks to the amendment before the committee.

Mr. FRANK. That's what I was doing, Mr. Chairman. The amendment before the committee——

Chairman SENSENBRENNER. You may proceed.

Mr. FRANK. Apparently the gentleman is so eager to get the debate over with that he decided not to pay any attention to it. That is his prerogative, but making false points of order—and I assume, Mr. Chairman, that the time consumed by that point of order does not come out of my time since it was not under my control and I didn't yield, as I may not control a point of order.

But in fact, let me read to the gentleman what he apparently did not read. "The requirements of this article"—this is part of the gentlewoman's amendment—"do not apply to any legislative measure necessary to preserve the solvency of the Federal Old Age and Survivors Insurance Trust Fund."

This would require you to a two—to take a two-thirds vote to protect the Social Security system as it now is pending. The gentlewoman says, no, we'll exempt measures for the Social Security system. I am speaking very directly to the amendment of the gentlewoman from Texas.

If we decided to protect the Social Security system by making that tax revenue system less regressive and cover some of the taxes on revenues—on incomes above $75,000, your amendment would require two-thirds.

I think a bill that would both make it less regressive, give relief to people making 30– and 40– and 50– and 60,000 a year, particular two-income couples in that category, and increase the total revenue by removing the cap or raising the cap, would be one of the best things we could do. I regret that we aren't doing it now, I regret that neither party has done it before.

The amendment, without the amendment of the gentlewoman from Texas, would say that requires two-thirds, and I say it would be terribly wrong for us to require a two-thirds vote to say that we were going to increase the level at which Social Security taxes could be levied for the purposes of both making it less regressive and putting some of that money into the Social Security system.

So while it pains the gentleman from California, it pains me more that we would make such a reasonable measure require a two-thirds vote.

Chairman SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from California seek recognition?

Mr. ISSA. Just a short answer——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. ISSA. For the gentleman from Massachusetts, I truly appreciate your speaking to the issue of a tax or some other example, but speaking on the merits of that tax and going into what we should do and how we should do it and so on in my opinion clearly was beyond the scope of this.

In an effort to move this along expeditiously but not adversely fast, I come from a state where I feel mandated to support a move towards a two-thirds majority to raise the taxes of the people of California. The Constitution of the State of California requires a two-thirds majority with rare exceptions to raise the taxes of the people of California.

So unlike the gentleman from Massachusetts who sees a simple majority as appropriate, I believe that all of us in the spirit of the Constitution and the will of the people of California are obligated to attempt to give the people of California as to their Federal dollars the same protection they have as to their state dollars.

Mr. FRANK. Would the gentleman yield?

Mr. ISSA. Yes, I will.

Mr. FRANK. I would just like to say to the gentleman that his conception of the germaneness rule is extraordinarily shaky. The fact is that when a constitutional amendment would make it harder to do a particular thing, discussing the desirability of that particular thing and giving an example of what would be involved is, in fact, very much in order, and I am sorry that the gentleman didn't like what I said, but he's going to have to be more inventive in trying to shut me up in the future.

Mr. WEINER. Will the gentleman from California yield?

Mr. ISSA. Just a moment.

Mr. WEINER. Sure.

Mr. ISSA. I certainly, Mr. Frank, appreciate that. As you know, I'm a freshman learning the ropes and was only questioning whether it was germane. I will learn as time goes on, presumably from——

Mr. FRANK. If the gentleman would yield, if the gentleman would yield, in the interest of his learning the ropes, the way to ask a question about whether something is germane is to ask a parliamentary inquiry. Making a point of order is not asking a question; it is making a statement and, in this case, an incorrect one.

Mr. ISSA. Thank you.

Mr. WEINER. Will the gentleman yield?

I am curious, given that California is the experience that you base your view on, is there a two-thirds requirement to make expenditures?

Mr. ISSA. Yes, there is.

Mr. WEINER. So it is a—would you support having a two-thirds majority here in Congress for expenditures to be made, and if so—I mean, wouldn't that be consistent since it's two-halves of the same equation? I yield back.

Mr. ISSA. Yes, I think that's a wonderful idea. Are you offering it as an amendment to this particular bill?

Mr. WEINER. Why not four-fifths?

Chairman SENSENBRENNER. That would be non-germane.

Mr. ISSA. Thank you, Mr. Chairman. I yield back the remainder of my time.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, the point that the gentleman from New York has made is exactly the problem with this constitutional amendment in its present form. You can increase spending with a simple majority, but it takes two-thirds to pay for it. In California, if you have two-thirds support for a—if you have support for—if you want to pass a budget, you need two-thirds of the vote. That would give—the same people who support it can pay for it. This bills says you can support it with a simple majority and you're just left with deficit spending, which is what we're trying to get away from.

California—it's the same two-thirds both ways, and that is not what's in this bill. That's why this is so important.

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Mr. Chairman, I won't take 5 minutes.

I confess to being in a real quandary here, because if we were seriously legislating, I would agree with your side that both of Ms. Jackson Lee's amendments really don't make any sense. They don't make any sense because the underlying bill doesn't make any sense, however.

I wouldn't want to write these provisions into the Constitution of the United States any more than I would want to write the underlying bill into the Constitution of the United States. So I'm in this quandary about whether we are seriously legislating and looking at something that the Judiciary Committee is supposed to take seriously or whether we're just engaging in the politics of whatever this is that the leadership has told us to engage in. And I'm—I'm going to try to continue to be serious about what I think our role ought to be, and in that spirit, I'm going to vote against Ms. Jackson Lee's amendments.

I do have two amendments that I think are serious that I hope will be considered in that same light, and I will yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendments en bloc offered by the gentlewoman from Texas, Ms. Jackson Lee.

Those in favor will signify by saying aye.

Opposed, no.

The no's appear to have it, the no's have it and the amendments are not agreed to.

Are there further amendments?

The gentleman from North Carolina, Mr. Watt, for what purpose do you seek recognition?

Mr. WATT. Mr. Chairman, I have an amendment at the desk, Watt 02.

Chairman SENSENBRENNER. The Clerk will report the amendment.

[The amendment Watt 02 to H.J. Res. 41 offered by Mr. Watt follows:]

AMENDMENT WATT 02—AMENDMENT TO H.J. RES. 41
OFFERED BY MR. WATT OF NORTH CAROLINA

Page 2, line 17, after the word "increase" insert "or decrease".

The CLERK. Amendment to H.J. Res. 41 41 offered by Mr. Watt of North Carolina. Page 2, line 17——

Mr. WATT. I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered, and the gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman, and I'll be very brief. I don't think this requires any elaborate explanation.

I think if this bill makes any sense and—it should work both ways. I don't think it makes any sense, so I'm going to vote against it even if you pass this amendment, but if it is to create some equity and to do something that is beneficial to our country, then I think it ought to work both ways.

I yield back the balance of my time.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Mr. Chairman, I move to oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be very brief.

Mr. Chairman, the whole purpose of this bill is to make it more difficult for Congress to raise taxes, and if Congress is able to decrease taxes on the American people, more power to us. Let's not make it any tougher.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from North Carolina, Mr. Watt.

Those in favor will signify by saying aye.

Opposed, no.

The no's appear to have it, the no's have it and the amendment is not agreed to.

For what purpose does the gentleman from New York, Mr. Nadler, seek recognition?

Mr. NADLER. Mr. Chairman, I have two amendments. I would like to ask that Amendment Number 1—I have two amendments at the desk. Will you read Number 1——

Chairman SENSENBRENNER. The Clerk will report Nadler Number 1.

[The Amendment Number 1 to H.J. Res. 41 offered by Mr. Nadler follows:]

AMENDMENT 1—AMENDMENT TO H.J. RES. 41
OFFERED BY MR. NADLER OF NEW YORK

Add at the end the following:
SECTION. The requirements of this article do not apply to any bill, resolution, or other legislative measure designed to improve enforcement of the internal revenue laws.

The CLERK. Amendment to H.J. Res. 41 offered by Mr. Nadler. At the end, the following: Section. The requirements of this article do not apply to any bill, resolution or other legislative measure designed to improve enforcement of the internal revenue laws.

Mr. NADLER. Thank you.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. I will be very brief on this. This is a very straightforward amendment that simply exempts from the super majority requirement any law that, although it would obviously increase revenues, would do so only by improving law enforcement.

Surely we should not be required to obtain a two-thirds vote to improve the enforcement of the existing law. That would turn this constitutional amendment into a criminal's protection act, and I'm sure that Mr. Chabot does not want that and will support this amendment. We cannot mean that. I assume that if enforcing the existing law stops people from—if we find a better way to enforce the existing law, the existing tax rates, the existing tax code, that stops someone from cheating and stealing money from the American people, that shouldn't require a two-thirds vote. There should not be a presumption in favor of criminals.

So anticipating Mr. Chabot's support, I—I urge the adoption of this amendment.

Chairman SENSENBRENNER. Does the gentleman yield back the balance of his time?

Mr. NADLER. I do.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman. I'm very—it's unfortunate that I'm going to have to let the gentleman from New York down, but I do not support his amendment. I know he's shocked, but the provisions of H.J. Res. 41 which allow for an increase in revenue by no more than a "de minimis" amount would cover the kind of situation that this amendment is intended to address, and

in addition a bill intended to improve tax law enforcement would in all likelihood have a broad consensus, and for that reason, we oppose the amendment.

Mr. NADLER. Would the gentleman yield for a question?

Mr. CHABOT. I'll be happy to yield.

Mr. NADLER. If there were a very small thief, then this amendment would be unnecessary because a "de minimis" increase in revenue would not trigger the amendment. But if there were a large previously successful thief or thieves, then it might be just "de minimis" amendment—"de minimis" revenues if we discovered how a bunch of people or a very large corporation is cheating. So we would need this amendment, would we not?

Mr. CHABOT. Reclaiming my time, we clearly believe that a "de minimis" amount would cover this. If you want to discuss Mark Rich and other cases, we could get into that, but not wanting to do that, we continue to oppose the amendment and we'll yield back the balance of our time.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, this——

Chairman SENSENBRENNER. Five minutes.

Mr. SCOTT.—invites a discussion again on what is "de minimis". If you had widespread Medicare fraud, a new enforcement technique might well reap billions of dollars in internal revenue.

My question to the gentleman from Ohio would be what is "de minimis" so we would know what kinds of enforcement mechanisms would qualify and which would not.

Mr. CHABOT. Will the gentleman yield?

Mr. SCOTT. I'll yield.

Mr. CHABOT. I thank the gentleman for yielding. In a previous Congress, Chairman Archer of the Ways & Means Committee had suggested that it be 1 percent or, excuse me, one-tenth of 1 percent over a 5-year period. That was their definition of "de minimis". But we would ultimately have to see how the courts interpreted this down the road or future congresses under a follow-up.

I yield back the balance.

MR. WEINER Mr. Chairman?

Mr. SCOTT. Reclaiming my time——

Chairman SENSENBRENNER. The time belongs to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, my offhand calculation would mean that would be tens of billions of dollars in tax revenue would constitute "de minimis"—billions—at least billions of dollars and over a 10-year period tens of billions of dollars would constitute a "de minimis" amount under that calculation. And I would yield to the gentleman to see if that's right.

Mr. CHABOT. Again, I thank the gentleman for yielding.

It's impossible to put an exact figure on that at this time. "de minimis" is terminology that's used in other pieces of legislation; there's all kinds of verbiage that are contained in bills which have to be subsequently defined and this perhaps will ultimately be one of those.

Mr. SCOTT. Reclaiming my time, then I guess the courts or the speaker will decide what is "de minimis" in the eyes of the beholder, I would suppose.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on——

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from New York, Mr. Weiner.

Mr. WEINER. I would move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. I am ultimately puzzled by why we should have any amendments to something that clearly doesn't have support in this House and clearly isn't going to be passed and amend any Constitution, and also the desire to kind of keep us on some intellectual even keel here.

Can I ask—I mean, this is an amendment that—the amendments that have been considered all, I think, point up some fundamental problems, but from the way I read the constitutional amendment that we're considering today, if we have a budget resolution that's offered on the floor that triples the number of IRS enforcement agents, it would trigger this bill and we would have a legislative and a constitutional fight over the future of the budget because it increases the number of agents.

We would have—if we had an omnibus banking bill that had tougher enforcement of the money laundering laws——

Mr. CHABOT. Will the gentleman yield?

Mr. WEINER. Certainly.

Mr. CHABOT. This particular—I thank the gentleman for yielding. This particular legislation only kicks in if we're talking about internal revenue issues, internal revenue laws. It wouldn't apply to additional personnel or any of the other items that the gentleman is raising.

And I again thank the gentleman for yielding.

Mr. WEINER. Well, reclaiming my time, you know, it is—you know, perhaps internal revenue laws is something that is a term of art that is defined elsewhere in the statute that maybe I—or certainly not—it's certainly not defined clearly enough in the Constitution to obviate any change in the budget as impacting our internal revenue. I mean, the fact of the matter is, if you, you know, if you think that we have difficult time—I mean, and you've said it, and to give the gentleman from Ohio credit, he made it very clear that his objective is to make some things more difficult to do. So when it was asked, well, should we make expenditures more difficult, well, maybe we should in some cases. When answering Mr. Nadler, said, well, there will be broad consensus on that, so that will be able to pass, we don't want to make that kind of thing more difficult.

The fact of the matter is, the way I look at it, if we ever do an omnibus appropriation, if we ever do an omnibus banking bill, if we ever do an omnibus budget bill, we are then going to have a constitutional question about the—about "de minimis", and with that, I'd like to ask a question.

Is there any other place in the Constitution that the words "de minimis" appear?

Mr. CHABOT. If the gentleman would yield, we appreciate that. I believe there are and we can point that out in a moment here.

Mr. WEINER. Do you have any case law that perhaps would give us some guidance, just so I know if "de minimis" is 2 percent or 8 percent or 9 percent?

Mr. CHABOT. We would be happy to provide that information to the gentleman; we just don't have the time at this point.

Mr. FRANK. Would the gentleman yield?

Mr. WEINER. Certainly.

Mr. FRANK. I would only point out, though, that if we did do this amendment and we included the word "de minimis" and we were subsequently to adopt an amendment requiring that English be the official language, I assume that would automatically previously amend the insertion of those Latin words "de minimis."

Mr. WEINER. I yield back my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from New York, Mr. Nadler.

Those in favor will say aye.

Opposed, no.

The no's appear to have it——

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The no's appear to have it, the no's have it and the amendment is not agreed to.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts, Mr. Frank——

Mr. FRANK. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

Mr. FRANK. Mr. Chairman, I ask unanimous consent it be considered as read. I'll explain it briefly.

Chairman SENSENBRENNER. Without objection. The gentleman is recognized for 5 minutes.

[The Amendment to H.J. Res. 41 offered by Mr. Frank follows:]

AMENDMENT TO H.J. RES. 41
OFFERED BY MR. FRANK OF MASSACHUSETTS

Add at the end the following:
SECTION. The requirements of this article do not apply to any bill, resolution, or other legislative measure necessary to preserve the solvency of the Federal Old Age and Survivors Insurance Trust Fund.

Mr. FRANK. This is a truncated version of the en bloc amendment offered by the gentlewoman from Texas. It does not include the environmental fee part. It says only that legislation aimed at protecting the solvency of the Federal Old Age and Survivors Insurance Trust Fund would not be subject to the rules.

I think we've debated it sufficiently. I'm ready to go it a rollcall, Mr. Chairman.

Chairman SENSENBRENNER. Okay. The question is on the amendment offered by the gentleman from Massachusetts, Mr. Frank. rollcall will be ordered.

All those in favor of the Frank amendment will signify by saying aye.

Opposed, no.

The Clerk will call the roll.

The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
[No response.]
The CLERK. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?

[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
Chairman SENSENBRENNER. No.
The CLERK. No.
Chairman SENSENBRENNER. Are there additional members in the room who desire to record or change their vote?
The gentleman from South Carolina.
Mr. GRAHAM. No.
Chairman SENSENBRENNER. The gentleman from Tennessee.
Mr. JENKINS. No.
Chairman SENSENBRENNER. Anybody else?
If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 8 ayes and 16 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
The gentleman from North Carolina, Mr. Watt.
Mr. WATT. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The Clerk will report the amendment.
[The Amendment Watt 01 to H.J. Res. 41 offered by Mr. Watt follows:]

AMENDMENT WATT 01—AMENDMENT TO H.J. RES. 41
OFFERED BY MR. WATT OF NORTH CAROLINA

Page 3, after line 15, insert the following:
"SECTION 3. This article shall not be construed as to give the Judicial Branch any authority except to declare whether the Legislative Branch is in compliance herewith."

The CLERK. Amendment to H.J. Res. 41——
Mr. WATT. I ask unanimous consent the amendment be considered as read.
Chairman SENSENBRENNER. Without objection, so ordered, and the gentleman is recognized for 5 minutes.
Mr. WATT. Thank you, Mr. Chairman.
I really think this proposed constitutional amendment puts us in a real separation of powers quandary which I'm trying to address and I'm trying to address it in the spirit of trying to do what I think is our responsibility in this committee.

This whole discussion about what is "de minimis" and what is not "de minimis" will get you to a point that it will actually be the United States Supreme Court who will decide what is "de minimis" and what is not "de minimis".

If we are going to do this with any degree of integrity, I think we've got to retain that responsibility here in our body, in the—in the legislative body and not give that authority over to the judicial branch.

So the impact of this amendment would be to say to the Supreme Court, yes, you can—if we pass something and it doesn't comply with this constitutional provision, yes, you can declare it, what we have done, unconstitutional, but you can't rewrite the bill to impose your own values on that because that's a legislative judgment. And the effect of this amendment would be to limit the judicial branch's authority to a declaration—in effect a declaratory judgment of whether what we had done complies with the statute or doesn't comply with the statute, or complies with this constitutional amendment or doesn't comply with the constitutional amendment, then the legislative branch could come back and redo it until we get it right, but the last thing I think we want to do is to give the courts the right to make these decisions for us.

So I'm offering this. I mean, I—again, I'm having the same problem I've had throughout this process. Are we serious about this or—and doing what we have as a responsibility as a judiciary committee and to other Members of the Congress who are not going to look at this this closely, or are we engaged in a political charade here? And I hope that you all will understand that this is basic to our constitutional prerogatives as a legislative body, and I hope that you will support the amendment.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

I move to oppose the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

Congress—and I'll be brief—Congress would have the authority to enforce and implement H.J. Res. 41 by appropriate legislation, and it's unlikely that persons would have standing in Federal court to challenge decisions made by Congress pursuant to H.J. Res. 41. So the amendment is unnecessary, and in addition, it's also inappropriate to restrict the power of the judicial branch in this manner. We should not put in the Constitution the manner in which courts must interpret a constitutional amendment, and therefore we oppose the gentleman's——

Mr. WATT. Would the gentleman yield?

Mr. CHABOT. I would be happy to yield.

Mr. WATT. The last time I checked, every American citizen had the right to raise a constitutional objection, and certainly somebody who refused to pay their taxes has the right to raise it.

I just—I don't understand what it is you're saying. What you're saying is former Chairman Archer can make this decision, Justice Rehnquist can make it, we don't care in this body what—what definition of "de minimis" is and what——

Mr. CHABOT. Reclaiming my time——

Mr. WATT.—I mean, because we're not even going to try to do our legislative responsibility.

Mr. CHABOT. Reclaiming my time, the courts oftentimes determine whether or not a person has standing; and in the vast majority of cases, the courts determine they don't have standing.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Watt amendment. Those in favor——

Mr. WEINER. Mr. Chairman? May I be heard on the Watt amendment brief—I won't take the full 5 minutes.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. First of all, I—with all due deference to the chairman of the subcommittee, the issue of standing in a constitutional matter, if you are a United States citizen, it's under the laws of the Constitution, you have standing. Furthermore, this is an act of Congress that affects all Americans, so you have standing if you are affected by the act of Congress. So the impact will be every single time we have a bill that has any impact or maybe no impact, it will—once we pass it, any American can go into court and say, wait a minute, this violated my constitutional right, that I have a constitutional right as an American citizen to make sure that my Congress acts according to the Constitution, so I am questioning the "de minimis", whether it's "de minimis" or not.

And I can tell you this is not an—well, this whole argument is a little bit abstract, but it's not an abstract discussion. There are groups in this town who believe that taxes should be much lower, so they are going to come in with every—every time we have a bill and go to court. Now, it might not reach the Supreme Court every time, and it might, you know, it might be handled quickly. "de minimis" is only 2 percent; do we have a precedent; now this is—2 percent is "de minimis"; 9 percent is not "de minimis". But the idea of standing is an absurd one.

I think what the amendment seeks to do is to say that when we legislate here, you know, on some level, there are broad constitutional prescriptions on things that we can do and very often our laws wind up before—before bodies that have to interpret its constitutionality.

I think what the author of the amendment is seeking to do is making sure that every single legislative action does not automatically result in a constitutional question. That is what the effect of this constitutional amendment will be if—if pigs fly and it passes. But I think that the idea that you—that the courts will have to determine who has standing on a constitutional question misunderstands the effect—the net effect of this amendment.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from North Carolina, Mr. Watt.

Those in favor will signify by saying aye.

Opposed, no.

The no's appear to have it——

Mr. WATT. I ask for a recorded vote.

Chairman SENSENBRENNER. A rollcall is ordered. Those in favor of the Watt amendment will, after your names are called, answer aye; those opposed, no; and the Clerk will call the roll.

The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no. Mr. Coble?
[No response.]
The CLERK. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
[No response.]
The CLERK. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, No. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?

[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman——
Chairman SENSENBRENNER. Are there additional members in the chamber who wish to cast or change their vote?
The gentleman from North Carolina.
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Tennessee.
Mr. JENKINS. No.
Chairman SENSENBRENNER. The gentleman from South Carolina.
Mr. GRAHAM. No.
Chairman SENSENBRENNER. The gentleman from Utah.
Mr. CANNON. No.
Mr. FRANK. Mr. Chairman?
Chairman SENSENBRENNER. The gentleman from Massachusetts.
Mr. FRANK. Aye.
Chairman SENSENBRENNER. Is there anybody else who desires to cast or change their vote?
If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 9 ayes and 16 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
The gentleman from New York, Mr. Nadler.
Mr. NADLER. Thank you. Mr. Chairman, I earlier said I had two amendments. I would ask the Clerk to report the second Nadler amendment.
[The Amendment Number 2 to H.J. Res. 41 offered by Mr. Nadler follows:]

AMENDMENT 2—AMENDMENT TO H.J. RES. 41
OFFERED BY MR. NADLER OF NEW YORK

Add at the end the following:
SECTION. The requirements of this article do not apply to any bill, resolution, or other legislative measure repealing any industry-specific exemptions, deductions, or credits.

Chairman SENSENBRENNER. The Clerk will report.

The CLERK. Amendment to H.J. Res. 41 offered by Mr. Nadler.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you.

Mr. Chairman, this bill is designed or will have the effect of benefiting the wealthy and powerful at the expense of the average American family and the poor.

This constitutional amendment makes it difficult to close unfair tax loopholes that benefit the powerful corporations and wealthiest Americans, requiring a two-thirds super majority to do so. For example, the amendment makes it difficult to curb the corporate welfare that our former colleague, Mr. Kasich, was always talking about, and to cut unproductive tax expenditures that grant subsidies to powerful special interests. Yet, according to a recent editorial in the Washington Post, quote, "When the baby boomers begin to retire, the country will be in an era of fiscal strain." To avoid destructive deficits, there will have to be tax increases and/or spending cuts. By making it harder to increase taxes, this amendment would compound the pressure on the major social spending programs—Social Security and Medicare.

I think Congress has been rightly criticized for busting the Federal budget with billions of dollars in special interest corporate welfare. We should not be making it harder to cleanse the Tax Code of these outrages.

Think of the tax break we could give our constituents if the special favors—or the—or the money we could have for prescription drugs for Medicare or for Social Security and Medicare in the future if the special favors for the oil industry or corporate agriculture or companies that move American jobs overseas were removed from the Tax Code. Perhaps these reforms will have to wait until we pass genuine and effective campaign finance reform—perhaps I should say if we pass genuine and effective campaign finance reform. The powers that be seem intent on—in this house, at least—seem intent on preserving the money machine, so perhaps my concerns on this front are moot.

Today, for example, we are doing another big favor for the wealthiest Americans on the floor. So be it. The rule around here seems to be dance with the one that brung you, so let the dance continue. I am, however, concerned that when the time comes to clean up this mess, a constitutional amendment of this sort will make it impossible to repair the damage.

For those smug enough to believe the need will never arise, I would point to just two instances in our recent experience. First was President Bush's now infamous "No new taxes" pledge in the heat of a campaign. It was a foolish promise. No serious person believed it, especially in light of Ronald Reagan's eight budget-busting years. His decision to break that promise——

Mr. CONYERS. Would the gentleman yield? Would the gentleman yield? Could he submit his statement, have a vote, and then a final vote before——

Mr. NADLER. Maybe we should—okay.

Mr. CONYERS. Thank you.

Chairman SENSENBRENNER. Without objection, the gentleman's statement will appear in the record.

[The statement of Mr. Nadler follows:]

PREPARED STATEMENT OF HON. JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

H.J.Res 41 is designed to benefit the wealthy and powerful at the expense of the average American family and the poor. This constitutional amendment makes it difficult to close unfair tax loopholes that benefit the powerful corporations and wealthiest Americans, requiring a two-thirds supermajority to do so. For example, the amendment makes it difficult to curb "corporate welfare" and cut unproductive tax expenditures that grant subsidies to powerful special interests. Yet, according to a recent editorial in the Washington Post, "when the baby boomers begin to retire . . . the country will be in an era of fiscal strain. To avoid destructive deficits, there will have to be tax increases and/or spending cuts. By making it harder to increase taxes, this amendment would compound the pressure on the major spending programs: Social Security, Medicare." I think Congress has been rightly criticized for busting the federal budget with billions of dollars in special interest corporate welfare. We should not be making it harder to cleanse the Tax Code of these outrages.

Think of the tax break we could give our constituents if the special favors for the oil industry or corporate agriculture or companies that move American jobs overseas were removed from the Tax Code. Perhaps these reforms will have to wait until we pass genuine and effective campaign finance reform. Perhaps I should say if we pass genuine and effective campaign finance reform. The powers that be seem intent on preserving the money machine, so perhaps my concerns on this front are moot.

Today, for example, we are doing another big favor for the wealthiest Americans. So be it. The rule around this place is "dance with the one that brung ya," so let the dance continue. I am, however, concerned that when the time comes to clean up this mess, a constitutional amendment of this sort will make it impossible to repair the damage.

For those smug enough to believe that the need will never arise, I would point to just two instances in our recent experience.

First, was President Bush's now infamous "no new taxes" pledge in the heat of a campaign. It was a foolish promise, no serious person believed it, especially in light of Ronald Reagan's eight budget-busting years. His decision to break that promise, although politically costly, was correct. It helped restore fiscal stability. Our ability to achieve the substantial surpluses we are now enjoying would have been made far more difficult if we had not acted so responsibly when we did. This amendment would have made President Bush's courageous change in course virtually impossible.

Second is the experience of the Great State of Texas under the stewardship of Governor Bush. His excessive tax cuts have resulted in huge deficits in Texas. He now means to do for the nation what he has done for the Lone Star State. He may be able to pass this boondoggle by a slim majority. What a disaster it would be for the nation if, after a second bout of Republican fiscal irresponsibility, Congress would have its hand tied, and be unable to repair the damage after George W. leaves town a second time before the consequences strike.

I am not proposing in my amendment that we reject this ill-considered rule altogether. At this time, all I am asking is that our ability to go back through the Code and remove only the most egregious, industry, or company, specific loopholes not be eliminated. Cleaning up corruption should not be held hostage to a supermajority rule. I do not think it is too much to ask that we be allowed to have the ability to do so when cooler heads prevail.

Chairman SENSENBRENNER. The question is on the Nadler amendment.

Those in favor will say aye.

Opposed, no.

The no's appear to have it, the no's have it.

The question——

Mr. NADLER. Can we have a rollcall on this, Mr. Chairman?

Chairman SENSENBRENNER. If the gentleman demands a rollcall, we will recess the committee until one o'clock——

Mr. NADLER. No, never mind, then.

Chairman SENSENBRENNER. The no's have it.

The question is now on the motion to report the joint resolution H.J. Res. 41 favorably. The Chair will order a rollcall. Those in

favor will signify by saying aye, those opposed no, and the Clerk will call the roll.
The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. Aye.
The CLERK. Mr. Gekas, aye. Mr. Coble?
Mr. COBLE. Aye.
The CLERK. Mr. Coble, aye. Mr. Smith?
Mr. SMITH. Aye.
The CLERK. Mr. Smith, aye. Mr. Gallegly?
Mr. GALLEGLY. Aye.
The CLERK. Mr. Gallegly, aye. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye. Mr. Barr?
Mr. BARR. Aye.
The CLERK. Mr. Barr, aye. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. Aye.
The CLERK. Mr. Hutchinson, aye. Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye. Mr. Graham?
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham, aye. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
Mr. SCARBOROUGH. Aye.
The CLERK. Mr. Scarborough, aye. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye. Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye. Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye. Ms. Hart?
[No response.]
The CLERK. Mr. Flake?
Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye. Mr. Flake.
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye. Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no. Mr. Frank?
Mr. FRANK. No.
The CLERK. Mr. Frank, no. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.

The CLERK. Mr. Nadler, no. Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no. Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. No.
The CLERK. Mr. Meehan, no. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin, no. Mr. Weiner?
Mr. WEINER. No.
The CLERK. Mr. Weiner, no. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no. Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Are there additional members in the chamber who wish to change or record their vote?
The gentleman from Tennessee.
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye.
Chairman SENSENBRENNER. Anybody else?
If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 17 ayes and 9 nays.
Chairman SENSENBRENNER. And the motion to report favorably is agreed to. Without objection, the title of the joint resolution is amended with the amendment before all members. Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Also without objection, the staff is directed to make any technical and conforming changes and all members will be given 2 days as provided by House rules, which means in this case April 20th, in which to submit additional dissenting supplemental or minority views.
This completes the business before the committee and the committee stands adjourned.
[Whereupon, at 11:52 a.m., the committee was adjourned.]

DISSENTING VIEWS

The problems with H.J. Res. 41, like past versions of the constitutional amendment,[1] are myriad and obvious: most fundamentally, it undercuts the very principle our nation was founded upon—majority rule. By requiring a supermajority to pass certain legislation, the amendment would diminish the vote of every Member of the House and Senate, nullifying the seminal democratic concept of "one person, one vote."

Moreover, the amendment would make it nearly impossible to eliminate corporate tax welfare or even to increase tax enforcement against foreign corporations. Furthermore, the amendment could make it difficult to maintain a balanced budget or to develop a responsible plan to restore Medicare or Social Security to long-term financial solvency. Such an amendment would endanger the reauthorization of excise taxes and related fees that support important programs such as Superfund, highway construction, and air safety. Also, the amendment is vague in that there is no definition of "internal revenue laws" or "de minimis amount." It is for these reasons that groups concerned about good government and budget policy, such as Common Cause,[2] The Concord Coalition,[3] Center on Budget and Policy Priorities,[4] Citizens for Tax Justice,[5] the AFL-CIO,[6] and AFSCME,[7] oppose the type of tax limitation constitutional amendment that the Majority is pursuing. For these and the reasons set forth below, we dissent from H.J. Res. 41.

I. THE AMENDMENT DISREGARDS THE CONSTITUTIONAL PRINCIPLE OF MAJORITY RULE

The framers of the Constitution wisely rejected the principle of requiring a supermajority for basic government functions.[8] James

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[1] Every year during tax season beginning in 1996, the Majority proposes a constitutional amendment to require a two-thirds vote in the House and Senate for any legislation that increases revenues. In 2000, H.J. Res. 94 was taken straight to the floor and failed by a vote of 234–192. In 1999, H.J. Res. 37 was taken straight to the floor and failed by a vote of 229–199. In 1998, H.J. Res. 111 was taken straight to the floor and failed by a vote of 238–186. In 1997, H.J. Res. 62 passed the Committee by a vote of 18–10 but failed in the full House by a vote of 233–190. In 1996, H.J. Res. 159 was taken straight to the floor and failed by a vote of 243–177.

[2] Letter from Scott Harshberger, President, Common Cause, to Representatives, U.S. Congress (Apr. 4, 2001) [hereinafter *Common Cause Letter*].

[3] Letter from Robert L. Bixby, Executive Director, The Concord Coalition, to Representatives, U.S. Congress (Apr. 2, 2001) [hereinafter *Concord Coalition Letter*].

[4] ROBERT GREENSTEIN, CENTER ON BUDGET AND POLICY PRIORITIES, THE CONSTITUTIONAL AMENDMENT TO REQUIRE A TWO-THIRDS SUPERMAJORITY TO RAISE TAXES (Apr. 10, 2001) [hereinafter Greenstein Report].

[5] Letter from Robert S. McIntyre, Director, Citizens for Tax Justice, to Representatives, U.S. Congress (Apr. 11, 2000) [hereinafter *CTJ Letter*].

[6] Letter from Peggy Taylor, Dep't of Legislation, AFL-CIO, to Representatives, U.S. Congress (Apr. 11, 2000) [hereinafter *AFL-CIO Letter*].

[7] Letter from Charles M. Loveless, Director of Legislation, AFSCME, to Representatives, U.S. Congress (Apr. 10, 2000) [hereinafter *AFSCME Letter*].

[8] It is significant to note that, because of population patterns, Senators representing some 7.3% of the population could prevent a bill from obtaining a two-thirds majority. See U.S. CEN-

Continued

Madison vehemently argued against supermajorities, stating that, under such a requirement, "the fundamental principle of free government would be reversed. It would be no longer the majority that would rule: the power would be transferred to the minority."[9]

Adopting a supermajority tax requirement would repeat the very mistakes made in the 1780's under the Articles of Confederation, which required a vote of nine of the thirteen States to raise revenue. It is because this system worked so poorly that the founding fathers sought to fashion a national government that could operate through majority rule.[10]

Supporters of a tax limitation amendment have sought to justify the departure from majority rule by pointing to other provisions in the Constitution that require a two-thirds vote, such as approving a treaty or obtaining a conviction in a congressional impeachment trial.[11] This argument, however, overlooks the fact that none of these supermajority requirements pertains to the day-to-day operations of the government—limiting such congressional authority is an invitation to gridlock.

Supporters of the measure also claim that, because fourteen States have adopted some form of a supermajority vote requirement for tax increases, the Federal Government also should have one. This argument bears little relation to the current debate. First, it is inappropriate to compare a State's revenue needs with the more comprehensive obligations of the Federal Government (such as economic policy and disaster assistance). In addition, many of the State requirements apply to particular types of taxes and do not apply to all or even the principal means of raising State tax revenue. For example, Florida's supermajority requirement applies only to corporate income taxes; exempt from the requirement is the sales tax on the purchase of goods—the primary source of the State's revenues.[12]

SUS BUREAU, U.S. DEP'T OF COMMERCE, 1996 POPULATION ESTIMATES (Dec. 30, 1996) (Press Release CB-96–244).

[9] *The Federalist Paper* No. 58, at 393 (James Madison) (The Belknap Press of Harvard University, 1961); see also *Common Cause Letter* at 1. At a Constitution Subcommittee hearing during the 104th Congress, Rep. Henry J. Hyde (R-IL), Chair of the House Committee on the Judiciary, echoed this concern:

> I am troubled by the concept of divesting a Member of the full import or his or her vote. You are diluting the vote of Members by requiring a supermajority of them to do something as basic to government as acquire the revenue to run government. It is a diminution. It is a disparagement. It is a reduction of the impact, the import, of one man, one vote.

Proposing An Amendment to the Constitution of the United States to Require Two-Thirds Majorities for Bills Increasing Taxes: Hearing on H.J. Res. 159 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 104th Cong., 2d Sess. 107 (1996).

[10] *Proposing An Amendment to the Constitution with Respect to Tax Limitations on H. J. Res. 62 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 105th Cong. 1st Sess. (1997) [hereinafter *1997 Judiciary Committee Hearing*] (statement of Robert Greenstein, Executive Director, Center on Budget and Policy Priorities).

[11] There are eleven matters for which a supermajority vote is required under the Constitution: Art. I, § 2, cl. 2 (ratification of a treaty); Art. I, § 3, cl. 6 (conviction in impeachment trials); Art. I, § 5, cl. 2 (expulsion of a Member of Congress); Art. 1, § 7, cl. 2 (override a Presidential veto); Art. II, § 1, cl. 3 (quorum of two-thirds of the States to elect the President); Art. II, § 2, cl. 2 (consent to a treaty); Art. V (proposing constitutional amendments); Art VII (State ratification of the original Constitution); amendment XII (quorum of two-thirds of the States to elect the President and the Vice President); amendment XIV, § 3 (to remove disability); and amendment XXV, § 4 (removal of President for disability).

[12] See 26 Fla. Stat. Ann. V. § 1(e) (West 1970). As Rep. Bobby Scott (D-VA) noted during the Committee's markup debate, California acts simultaneously on taxes and spending cuts through the annual budget process, which considerably diminishes the supermajority's impact on tax increases because both spending increases and tax increases are subject to the same supermajority requirement. It is also important to note that total tax receipts collected by the Federal, State,

In addition, arguments by proponents that seven States that have had a supermajority tax requirement[13] have enjoyed more rapid economic growth also are misleading.[14] A study by the Center on Budget and Policy Priorities found that such analysis was "simplistic" and "flawed."[15] This study found that, by some measures, supermajority States had lower economic growth and more tax increases than other States.[16] For example, between 1979 and 1989, four of the seven States had lower than average economic growth as measured by State gross domestic product; five of the seven States experienced lower than average growth when measured by changes in per capita income; and six of the seven States had higher than average increases in State and local revenues as a percentage of residents' income.[17] Obviously, there are many factors that impact State growth other than supermajority tax requirements, including a State's educational system and the skill of its workforce.

II. THE AMENDMENT WOULD MAKE IT DIFFICULT TO CLOSE TAX LOOPHOLES

In addition, H.J. Res. 41 will make it nearly impossible to eliminate tax loopholes, thereby locking in the current tax system at the time of ratification. As Dean Samuel Thompson, one of the nation's leading tax law authorities, observed at a 1997 House Judiciary Subcommittee hearing on the proposal:

> The core problem with this proposed Constitutional amendment is that it would give special interest groups the upper hand in the tax legislative process. Once a group of taxpayers receives either a planned or unplanned tax benefit with a simple majority vote of both Houses of Congress, the group will then be able to preserve the tax benefit with just a 34% vote of one House of Congress.[18]

The potential revenue loss to the Treasury Department from such loopholes is staggering. A Congressional Budget Office study found that over half of the corporate subsidies the Federal Government provides are delivered through "tax expenditures."[19] Such ex-

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and local governments (as a percentage of gross domestic product) in the United States (30.8% in 2000)—is lower than almost all of the other major industrialized countries (Japan: 30.5%; Germany: 45.6%; France: 49.8%; Italy: 45.9%; United Kingdom: 40.3%; Canada: 42.5%). See GREGG A. ESENWEIN, CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, THE U.S. FISCAL POSITION COMPARED TO SELECTED INDUSTRIAL NATIONS, (CRS Report RL30560, May 19, 2000). Moreover, Federal tax revenue, as a percentage of gross domestic product, was 20% in 1999 and has remained near that level since 1960. See GREGG A. ESENWEIN, CONGRESSIONAL RESEARCH SERVICE, U.S. LIBRARY OF CONGRESS, RECENT TRENDS IN THE FEDERAL TAX BURDEN (CRS Report RS20059, Mar. 27, 2000).

[13] Arkansas, California, Delaware, Florida, Louisiana, Mississippi, and South Dakota.

[14] See *1997 Judiciary Committee Hearing* (statement of Daniel J. Mitchell, The Heritage Foundation).

[15] IRIS J. LAV & NICHOLAS JOHNSON, CENTER ON BUDGET AND POLICY PRIORITIES, DO STATES WITH SUPERMAJORITIES HAVE SMALLER TAX INCREASES OR FASTER ECONOMIC GROWTH THAN OTHER STATES? (Apr. 10, 1997).

[16] *Id.* at 1.

[17] *Id.* at 1–2.

[18] *1997 Judiciary Committee Hearing* (statement of Samuel Thompson, Dean, University of Miami School of Law).

[19] CONGRESSIONAL BUDGET OFFICE, CONGRESS OF THE UNITED STATES, FEDERAL FINANCIAL SUPPORT OF BUSINESS (July 1995). "Tax expenditures" are provisions of the tax code that selectively reduce the tax liability of particular individuals or businesses. See also OFFICE OF MANAGEMENT AND BUDGET, ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT FOR FISCAL YEAR 2002 61 (Apr. 9, 2001).

penditures were estimated to cost the Federal Government $455 billion in fiscal year 1996 alone—triple the deficit at the time, and a full two-and-one-half times as much as all means-tested entitlement programs combined.[20]

In this regard, a 2001 study by the Institute on Taxation and Economic Policy shows that corporate tax breaks permitted at least forty-one companies to pay less than zero dollars in taxes in at least 1 year between 1996 and 1998—these companies actually got tax rebates totaling $3.2 billion from the Federal Government.[21] Eleven of these companies actually had negative Federal tax rates every year from 1996 to 1998.[22] Not surprisingly, the industry enjoying the lowest tax rates during this 3-year period was the oil industry.[23]

Furthermore, these loopholes affect State governments as well as the Federal Government. The same study by the Institute on Taxation and Economic Policy states that:

> The loopholes that reduce Federal corporate income taxes cut State corporate income taxes, too, since State corporate tax systems generally take Federal taxable income as their starting point in computing taxable corporate profits. . . . It's a mathematical truism that low and declining State revenues from corporate income taxes means higher State taxes on other State taxpayers or diminished State and local public services.[24]

In addition, the tax limitation amendment would make it exceedingly difficult to make foreign corporations pay their fare share of taxes on income earned in this country. Congress would even be limited from changing the law to increase penalties against foreign multinationals who avoid U.S. taxes by claiming that profits earned in the United States were realized in offshore tax havens. Estimates of the costs of such tax dodges are also significant; a 1992 Internal Revenue Service study estimated that foreign corporations misreported information on their tax returns at a cost of $30 billion per year.[25]

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[20] CITIZENS FOR TAX JUSTICE, THE HIDDEN ENTITLEMENTS (May 1996). According to Internal Revenue Service documents, drastic staff reductions have prevented it from pursuing individuals whose failure to pay taxes cost the Federal Government approximately $2.5 billion in 2000. David Cay Johnston, *A Smaller IRS Gives up on Billions in Back Taxes*, N.Y. Times, Apr. 13, 2001, at A1; see also *The Cost of Ignoring Tax Evasion*, N.Y. Times, Apr. 16, 2001. Those documents show that, since 1992, IRS audits have fallen by two-thirds because the agency's staff has fallen from 115,000 to 97,000 in 8 years.

[21] INSTITUTE ON TAXATION AND ECONOMIC POLICY, CORPORATE INCOME TAXES IN THE 1990'S 2 (2001) [hereinafter *ITEP Report*]. For example, Lyondell Chemical had 1998 profits of $80 million, but its tax was negative $44 million (tax rate of negative 55%); Texaco had 1998 profits of $182 million, but its tax was negative $67.7 million (tax rate of negative 37.2%); and Chevron had 1998 profits of $708 million, but its tax was negative $186.8 million (tax rate of negative 26.4%).

[22] *Id.* For example, Goodyear's average tax rate for the years 1996 to 1998 was negative 9.9%, Texaco's was negative 8.8%, and Ryder's was negative 6.2%.

[23] *Id.* at 4.

[24] *Id.* at 11.

[25] The IRS also found that on average, foreign companies report only 40% of what comparable American companies reported in taxes. See *Department of the Treasury's Report on Issues Related to the compliance with U.S. Tax Laws By Foreign Firms Operating in the United States: Hearing Before the Subcomm. on Oversight of the House Ways and Means Comm.* 102d Cong., 2d Sess. 7 (1992) [hereinafter *1992 Ways and Means Committee Hearing*] (statement of Rep. Pickle, Chairman, Subcommittee on Oversight).

The problem is particularly acute in the automobile and electronics industries. For example, of foreign automotive company tax returns reviewed in a congressional study, 28% showed no taxes due, even though these firms reported sales of nearly $27 billion. One foreign auto company had $3.4 billion in sales over 2 years and paid no taxes. Of the foreign electronics companies reviewed in the study, 40% paid no U.S. income tax whatsoever, though they reported sales

Furthermore, adoption of H.J. Res. 41 would make it even more onerous than it already is to repeal or limit statutorily-permitted foreign tax credits or deferrals of taxes on unrepatriated foreign profits.[26] Estimates regarding how much the deferral provision costs U.S. taxpayers easily reach into the billions.[27] Congress's Joint Committee on Taxation predicted that the loophole would cost $800 million in 2001, while the Treasury Department found the total to be $1.4 billion.[28] Furthermore, a Congressional Budget Office forecast expects taxpayers to lose $3.8 billion per year by 2011, while the publication *Tax Notes* estimated the loss to be $10 billion per year.[29]

Not only do these loopholes cost individual taxpayers desperately-needed funds—they cost our workers jobs.[30] While in the past U.S. companies have laid off workers in the United States to cut costs, they have hired additional workers overseas to take advantage of tax provisions requiring the payment of taxes on foreign profits only if those profits are repatriated to the United States.

In rejecting these arguments, the Majority has attempted to argue that, under a tax limitation amendment, a two-thirds majority would not necessarily be required if the elimination of the loophole was linked to other tax cuts so that the overall bill was revenue neutral.[31] Although it is not entirely clear the amendment would operate in such a fashion,[32] even if it did, this interpretation would prevent using the funds raised from the elimination of such loopholes for any reason other than providing for tax cuts. For example, such revenues could not be used for debt reduction, disaster assistance, education, Medicare, or Social Security. There is simply no legitimate policy reason to link a bill raising taxes on foreign

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of almost $30 billion. One electronics firm sold $2.4 billion of products over 8 years and paid no taxes. Another company had sales of more than $9.4 billion in the United States and paid $156 in taxes. *Id.*

[26] The foreign tax credit allows U.S.-based multinational corporations to reduce their taxes in this country by one dollar for every dollar of taxes they pay overseas. 26 U.S.C. §§ 27, 33. This favorable treatment contrasts sharply with the treatment of nearly every other business expense—whether it be wages or taxes paid to State or local governments here in the United States. The foreign deferral provision, vehemently opposed by the Clinton Treasury Department, allows U.S. corporations to pay no income taxes on the profits of their foreign subsidiaries unless and until such profits are remitted to the U.S. parent. 26 U.S.C. §§ 11(d), 882, 901, 951. If profits are never paid as dividends to the parent, taxes never become due in the United States, amounting to an interest-free loan from U.S. taxpayers.

[27] Sam Loewenberg, *Business Eyes Tax Break on Foreign Profit*, LEGAL TIMES, Feb. 26, 2001, at 1.

[28] *Id.*

[29] *Id.*

[30] See *AFL-CIO Letter*. Since 1979, we have lost almost 3 million manufacturing jobs in this country. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CURRENT EMPLOYMENT STATISTICS PROGRAM (Apr. 4, 1997). During the economic downturn of the mid-1990's, we lost 26,000 manufacturing jobs per month—the equivalent of shutting down one Fortune 500 company every 30 days. *Id.* At the same time, the number of overseas jobs with U.S.-based manufacturing companies skyrocketed. For example, there are nearly 40,000 foreign workers working for U.S. corporations in Singapore alone. The Wall Street Journal has reported in the past that nearly half of the export jobs in China are linked to U.S.- and other multinational-based companies. See Joseph Kahn, *Foreigners Help Build China's Trade Surplus*, Wall St. J., Apr. 7, 1997, at A1.

[31] H.R. Rep. No. 50, 105th Cong., 1st Sess. 7–8 (1997) (House Committee on the Judiciary report on H.J. Res. 62).

[32] *1997 Judiciary Committee Hearing* ("It is not clear from the text of H.J. Res. 62 [a prior tax limitation amendment] whether . . . it would only apply to a bill that leads on an overall basis to an increase in tax.") (statement of Dean Thompson).

corporations or eliminating abusive loopholes with any additional Federal tax changes.[33]

Incredibly, under the Majority's proposal, even measures that raised revenue by improving tax enforcement would require a two-thirds majority vote.[34] As a result, new anti-fraud provisions or even a program of stepped-up enforcement against foreign multinationals who avoid U.S. taxes would be subject to a supermajority requirement.

III. THE AMENDMENT COULD LEAD TO LARGE CUTS IN SOCIAL SECURITY AND MEDICARE AND A RETURN TO DEFICIT SPENDING

In addition, H.J. Res. 41 could lead to large reductions in Social Security and Medicare benefits. As the *Washington Post* previously noted:

> When the baby boomers begin to retire not that many years from now, the country will be in an era of constant fiscal strain. To avoid destructive deficits, there will have to be tax increases and/or spending cuts. By making it harder to increase taxes, the amendment would compound the pressure on the major spending programs: Social Security, Medicare, Medicaid and the rest. Is that what Congress really wants to do? The pressure on those programs is great enough as it is.[35]

Democratic Members offered an amendment to ensure that measures designed to secure the financial solvency of Social Security would not be subject to the supermajority requirement, but the Majority defeated it on a party-line vote of 8–16.[36]

Also, the proposed tax limitation would rule out measures to raise Medicare premiums for higher income individuals' as well as modest measures to shore up Social Security and Medicare.[37] For example, if Congress attempted to make Social Security payroll taxes more progressive, such as by imposing higher tax rates on higher-income individuals, there would be an increase in the revenue laws and the supermajority requirement would be triggered.[38] Indeed, when the Republican budget reconciliation bill reached the

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[33] MARKUP OF H.J. RES. 41, HOUSE COMM. ON THE JUDICIARY, 107th Cong., 1st Sess. (2001) [hereinafter *H.J. Res. 41 Markup*]. Unfortunately, the Majority rejected by voice vote an amendment offered by Rep. Jerrold Nadler (D-NY) to exclude from the supermajority requirement any measures that closed corporate tax loopholes. The amendment added at the end of the resolution the following: "The requirements of this article do not apply to any bill, resolution, or other legislative measure repealing or reducing any industry-specific exemptions, deductions, or credits."

[34] Rep. Nadler offered an amendment that would have exempted from the provisions of the tax limitation amendment any measures designed to improve revenue enforcement, but the Majority rejected it on a voice vote. *Id.* The amendment added at the end of the resolution the following: "The requirements of this article do not apply to any bill, resolution, or other legislative measure designed to improve enforcement of the internal revenue laws."

[35] *Show Vote on Tax Day*, Wash. Post, Apr. 9, 1997, at A20 (editorial).

[36] *H.J. Res. 41 Markup.* Rep. Barney Frank (D-MA) offered an amendment that added at the end of the resolution the following: "The requirements of this article do not apply to any bill, resolution, or other legislative measure necessary to preserve the solvency of the Federal Old Age and Survivors Insurance Trust Fund."

[37] Unfortunately, the tax burden in recent years has fallen mainly on income and Medicare and Social Security payroll taxes. *ITEP Report* at 10 ("In fiscal years 1997–99, personal income tax payments grew by 28 percent and Social Security and Medicare payroll taxes on wages grew by 22 percent. But corporate income tax payments went up by a total of only 8 percent over the 3 years, and actually fell from fiscal 1998 to fiscal 1999.").

[38] Payroll taxes for Social Security are capped for the year 2001 to the first $80,400 of income and are imposed on all taxpayers at the same rate. DAVID KOITZ, U.S. LIBRARY OF CONGRESS, CONGRESSIONAL RESEARCH SERVICE REPORT: SOCIAL SECURITY AND MEDICARE PREMIUMS—A FACT SHEET (CRS Report 94–28 EPW, Jan. 4, 2001). The effect of this is that lower-income taxpayers pay a higher percentage of their salaries for Social Security.

House floor in the fall of 1995, it became clear that its proposed increase in Medicare premiums for those at higher income levels constituted a tax increase.

Similarly, legislation expanding Social Security to include State and local government employees—which the Advisory Council for Social Security has proposed—would result in a revenue increase and would therefore be subject to the two-thirds requirement.[39]

Another dangerous byproduct of H.J. Res. 41 could be a return to deficit spending. As the Center on Budget and Policy Priorities testified:

> The amendment would make it virtually impossible to amass the two-thirds majority required to pass large deficit reduction packages that include both reductions in Federal programs and measures to raise revenue. As a result, the amendment would erect serious new barriers to long-term deficit reduction.[40]

It is for these reasons that the nation's perhaps most credible advocate of deficit reduction—the bipartisan Concord Coalition—strongly opposes a supermajority tax requirement. In its view, "enactment of [a tax limitation] constitutional amendment would unduly complicate the budget process. . . . No area of the budget—on either the spending or the revenue side—should receive preferential treatment such as requiring supermajority votes."[41]

IV. THE AMENDMENT WILL ENDANGER EXCISE TAXES THAT FUND PUBLIC SAFETY AND ENVIRONMENTAL PROGRAMS.

Another problem with this tax limitation amendment is that there are many important public safety programs funded by excise taxes whose extension would be subject to a supermajority vote. Many such excise taxes are dedicated to purposes such as transportation trust funds, Superfund, and compensation for health damages.[42] H.J. Res. 41 would apply to excise taxes on alcohol, tobacco, and pensions, as well as a variety of environmental taxes.[43]

Former White House Counsel Lloyd Cutler explained the difficulties a supermajority tax requirement could cause in the context of extending such taxes:

> Today a simple majority of the Senate and House could restore the [expired airline ticket tax]. . . . But under the proposed amendment, it would take 67 of the 100 senators and 290 of the 435 congressmen to restore this tax which, having expired

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[39] See *Greenstein Report*.

[40] *1997 Judiciary Committee Hearing* (statement of Robert Greenstein). Between 1982 and 1993, five pieces of legislation that raise significant revenue were enacted. The Tax Equity and Fiscal Responsibility Act of 1982, passed the House by a vote of 226–207. The 1987 Social Security rescue plan was passed by a vote of 282–148. The Omnibus Budget Reconciliation Act of 1987, a product of bipartisan negotiations that contained both spending cuts and revenue increases, passed by a vote of 237–181, and the Omnibus Budget Reconciliation Act of 1993 passed by a slender vote of 218–216.

[41] *Concord Coalition Letter* at 1.

[42] See JAMES V. SATURO & LOUIS ALAN TALLEY, U.S. LIBRARY OF CONGRESS, CONGRESSIONAL RESEARCH SERVICE REPORT: TAX LIMITATIONS PROPOSALS—AN ASSESSMENT OF THE ISSUES AND OPTIONS TOGETHER WITH THE MAJOR TAX ACTS, VOTES, AND REVENUE EFFECTS (CRS Report 97–372 E, March 20, 1997); see also *1997 Judiciary Committee Hearing* (statement of Rep. Charles Rangel (D-NY), Ranking Member, House Comm. on Ways and Means).

[43] See generally 26 U.S.C. Chapters 31–47, 51–54.

on December 31, 1995, would clearly be a "new" tax covered by the amendment.[44]

In an effort to carve-out at least one important program from the onerous supermajority requirement, Democratic Members offered an amendment that would have excluded from the supermajority requirement any measures that imposed environmental taxes; again, the Majority rejected it.[45]

V. THE AMENDMENT IS VAGUE AND COULD TRANSFER SIGNIFICANT AUTHORITY TO THE COURTS

H.J. Res. 41 will present a variety of new and complex interpretational difficulties. Most notably, there is no definition of the term "internal revenue laws," a new term of art with no legislative antecedent.[46] For example, although proponents of similar proposals have contended in the past that there is a clear distinction between "taxes" (which they believe are "internal revenue") and "user fees" (which they believe are not "internal revenue"),[47] this is a distinction without any meaningful difference in practice. As Richard Darman, Director of the White House Office of Management and Budget under President Reagan, acknowledged, "[i]f it looks like a duck and walks like a duck and quacks like duck, it is a duck, [and] euphemisms like user fees will not fool the public."[48]

Another definitional problem arises from the fact that it is unclear how and when the so-called "de minimis" increase is to be measured, particularly in the context of a $1.5 trillion annual budget.[49] Would we look at a one, five, or 10-year budget window? What if a bill resulted in increased revenues in years one and two, but lower revenues thereafter? It is also unclear when the revenue impact is to be assessed—based on estimates prior to the bill's effective date, or subsequent determinations calculated many years out. Further, if a tax bill was found retroactively to be unconstitu-

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[44] *A Proposed Constitutional Amendment To Require A Two-Thirds Vote to Increase Taxes: Hearing on S.J. Res. 49 Before the Subcomm. on the Constitution, Federalism and Property Rights of the Sen. Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996) (statement of Lloyd Cutler).

[45] *H.J. Res. 41 Markup.* Rep. Jackson Lee offered an amendment that added at the end of the resolution the following: "The requirements of this article do not apply to any bill, resolution, or other legislative measure that imposes an environmental tax, fee, charge, or assessment." The amendment was defeated on a voice vote.

[46] Proponents' arguments that the courts can resolve the meaning of such open-ended terms in the same way they have "equal protection" and "due process" also miss the point. The courts are the most appropriate body to protect such individual rights and liberties from government excesses in these areas. On the other hand, judging the policy value of tax legislation is an inherently political judgment and should not involve the judiciary.

[47] H.R. Rep. No. 50 at 3.

[48] See *Hearing on Nomination of Richard Darman to be the Director of the Office of Management and Budget Before the Senate Comm. on Governmental Affairs*, 101st Cong., 1st Sess. (1989). The amendment's authors allowed for a loophole of potentially massive dimensions when they stated that efforts to adjust the Consumer Price Index—which would reduce indexing for tax brackets—would not constitute a change in "internal revenue." (Transcript at 39 ("under the [revised] language [reducing the CPI] would not [require a two-thirds vote], because that would not be a change to the internal revenue laws.") Under this interpretation, legislation such as that offered by Sen. William Roth (R-DE), Chair of the Senate Finance Committee, reducing CPI adjustments by 1.1% per year—and which Congressional Budget Office estimated would increase income taxes by $22.8 billion per year in 2002 and more than double that by 2006—would not constitute an increase in "internal revenue." See S. 2, 105th Cong., 1st Sess. (1997).

[49] See, e.g., *Concord Coalition Letter* at 1.

tional, the tax refund issues could present insurmountable logistical and budget problems.[50]

All of these ambiguities point to one of the most serious problems inherent in H.J. Res. 41: uncertainty regarding the branch of government vested with responsibility for interpeting and enforcing the amendment's requirements. If H.J. Res. 41 is read to authorize judicial interpretation and enforcement, courts would be drawn into fundamental policy disputes best left to the Congress;[51] on the other hand, if judicial enforcement is unavailable, those seeking redress for improperly-imposed tax increases would be left without a meaningful remedy, undermining the public's faith in the Constitution. Moreover, it is doubtful the public would approve of Congress selecting an unelected official, such as the head of the Congressional Budget Office, to police these matters.

VI. THE MAJORITY FREQUENTLY HAS WAIVED ITS OWN HOUSE RULES REQUIRING A SUPERMAJORITY VOTE TO INCREASE TAXES

The unworkability of H.J. Res. 41 is illustrated by the fact that the Majority frequently has ignored its own House rule preventing tax rate increases from taking effect unless approved by three-fifths of the House.[52] In the 104th Congress, the Majority ignored or waived this three-fifths requirements for tax increases on six separate occasions.[53] As Rep. Charles Stenholm (D-TX) wrote in the Washington Post:

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[50] Jim Miller, Director of the White House Office of Management and Budget under President Reagan, testifying on behalf of the Citizens for a Sound Economy, stated that the "de minimis" requirement should be taken out. See *1997 Judiciary Committee Hearing*.

[51] In the event judicial review is invoked, the proposed tax limitation amendment would raise difficult questions concerning standing. For example, it would be unclear whether a taxpayer whose taxes were raised would be able to show sufficient harm to constitute a "case or controversy" or whether it would be necessary for a Member or a whole House of Congress to bring the legal challenge. See *Balanced Budget Constitutional Amendment: Hearing before the Subcomm. on the Const. of the House Comm. on the Judiciary*, 104th Cong., 1st Sess. 229 (1995) (statement of Walter Dellinger, Asst. Attorney General, Office of Legal Counsel, U.S. Dep't of Justice). To avoid these complications, Rep. Melvin L. Watt (D-NC) offered an amendment to ensure the courts did not get involved in this political question. The amendment stated: "This article shall not be construed as to give the Judicial Branch any authority except to declare whether the Legislative Branch is in compliance herewith." The Majority rejected it on a party-line vote of 9–16.

[52] House rule XXI 5(c), 104th Cong., 1st Sess. (1995).

[53] On April 5, 1995, during the consideration of H.R. 1215, the Contract with America Tax Relief Act, the House Parliamentarian ruled that the new House rule did not apply to the bill even though H.R. 1215 would have repealed the current 50% exclusion for capital gains from sales of certain small business stock. The net effect of H.R. 1215 was to increase the maximum rate of tax on those gains from 14% (50% inclusion times 28% top rate) to 19.8%. All seem willing to concede now that the ruling was erroneous. Even Speaker Newt Gingrich (R-GA) in a June 27, 1995 letter, responding to an inquiry by Reps. Jim Gibbons (R-NV), Joe Moakley (D-MA), and Richard Gephardt (D-MO), conceded that the ruling did not seem "either satisfactory or overly compelling."

On October 26, 1995, the Republicans waived the House rule for consideration of H.R. 2491, the FY 1996 budget reconciliation bill and its conference report. The bill contained several tax rate increases.

On October 19, 1995, the Republicans waived the House rule for consideration of H.R. 2425, the Medicare Preservation bill (which would have imposed additional taxes on withdrawals from MedicarePlus Medical Savings Accounts and premium increases on high-income Medicare beneficiaries).

On March 28, 1996, the Republicans waived the House rule for consideration of H.R. 3103, the Health Coverage Availability and Affordability bill (imposing additional taxes on withdrawals from Medical Savings Accounts).

On May 22, 1996, the Republicans waived the House rule for consideration of the Small Business Protection Act.

On July 31, 1996, the House rule was waived for the Personal Responsibility and Work Opportunity Reconciliation Act of 1995 (possible increases in the earned income tax credit program).

> [T]he final blow to any hope that the vote [on the supermajority tax requirement] might be for real comes from the dismal adherence Republicans have made to their own internal House rule requiring a three-fifths vote to raise taxes. After much fanfare during the organization of the 104th Congress, the House leadership has waived its own effort to restrain itself in every potential instance except one.[54]

In an attempt to avoid these problems, at the beginning of the 105th Congress, the House rule was significantly narrowed to limit its application to increases in particular tax rates specified under the Internal Revenue Code, rather than tax rate increases generally.[55] Such experiences highlight the unworkability of setting forth special procedural rules concerning tax laws and tax rates and these problems would be greatly compounded in a constitutional context.

CONCLUSION

Few measures demonstrate the Majority's inability to understand issues of real importance to the American people like this tax limitation amendment. Year after year, this amendment is brought to the House floor, and year after year it fails. In the meantime, there has been no congressional action on real issues that affect real people, such as a patients' bill of rights, prescription drug benefits for seniors, or a minimum wage increase. For these reasons, we respectfully dissent.

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MAXINE WATERS.
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TAMMY BALDWIN.
ANTHONY D. WEINER.

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[54] Charles Stenholm, *An Amendment Without a Prayer*, Wash. Post, Apr. 15, 1996, at A21.
[55] House rule XXI 5(c), 105th Cong., 1st Sess. (1997).